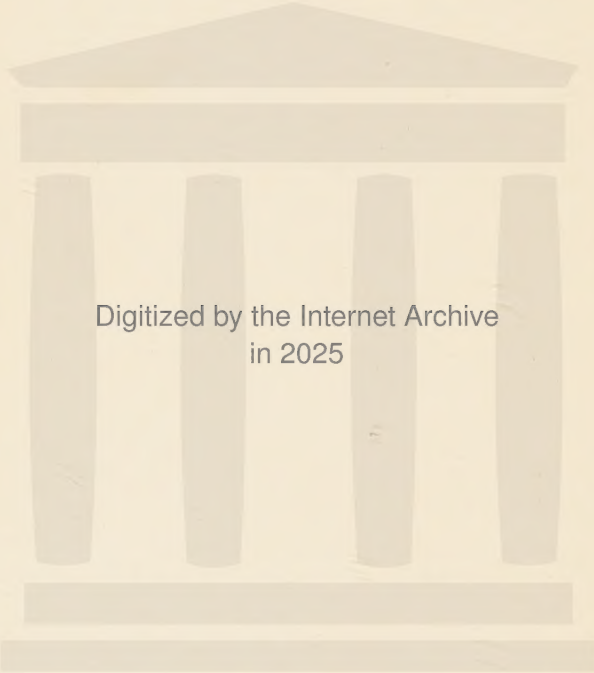




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The Busy Pastor's Book ...on... Matrimony



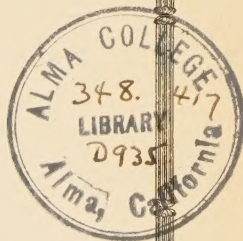
BY
CANON P. DURIEUX
*Doctor of Theology and Canon Law
Secretary to the Bishop of Le Puy*



Translated by
REV. OLIVER DOLPHIN
Faribault, Minn.



With a Foreword by
MOST REVEREND AUSTIN DOWLING, D.D.
Archbishop of St. Paul



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Foreword

THE publication of the New Code has not only made the Canons of the Church a handbook that finds its place in every priest's library, but, in quite an unexpected way, it has imposed upon the clergy the obligation of understanding and interpreting the actual text of the Canons. The popular summary of the Church's legislation on the Sacrament of Matrimony, which the learned Canon Durieux of the diocese of Le Puy in France, has prepared under the title of **THE BUSY PASTOR'S BOOK ON MATRIMONY** will thus find a ready welcome from many an earnest priest who senses the complications and the pitfalls for the unwary in this most thorny subject.

The success which has attended the appearance of this little work in France will surely follow it in its English dress amongst those whose business it is to deal with the proper canonical administration of the Sacraments. With **THE BUSY PASTOR'S GUIDE** and **THE EUCHARIST, LAW AND PRACTICE**, it will form a small library of canonical information and enlightenment such as few priests can afford to dispense with.

† AUSTIN DOWLING,
Archbishop of St. Paul.

September 8, 1926.

Preface

WHEN we published the first edition of this little work, we stated that our purpose was to put within the reach of parish priests a practical guide which would furnish a prompt answer to their difficulties, and give them useful suggestions in the inquiries and proceedings (oftentimes quite numerous) necessitated by the celebration or the revalidation of marriages. With this end in view, we have omitted purely theoretical discussions and the scientific methods of pretentious treatises, in order to give nothing but clear and precise conclusions. This little book is, first of all, and above all, a collection of practical points, and of useful formulas.

The warm welcome extended this unpretentious little volume leads us to believe that it can still render some service to its readers, and maintain a modest place beside those learned works which, for years past, have dealt with these important questions. We have therefore revized and completed it, taking into account the most recent decisions of the Commission for the Interpretation of the Code, and being guided by the most authoritative works. We have cleared up certain rather obscure points, and corrected a few inexactitudes. The numerous notes printed at the bottom of the pages, and certain intentional repetitions of practical indications will help, we sincerely hope, to simplify the work of our confrere and to facilitate their ministry. This is our whole ambition.

THE AUTHOR.

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✠ AUSTIN DOWLING, D.D.,
Archbishop of St. Paul

General Notions

1:—THE NATURE OF MARRIAGE.—Marriage is a contract by which one man and one woman mutually accord to each other the right to the accomplishment of those conjugal relations which have for their end the generation of offspring (Can. 1081).

This consent is *de jure naturali*, and nothing can take its place; it supposes that the parties are capable of making the contract. Moreover, this contract has a social aspect, and therefore society has the right to regulate its conditions; marriage is null and void if legitimate authority has passed laws which prevent the valid exchange of consent.¹

2:—Since the time of Our Lord Jesus Christ, every valid matrimonial contract between baptized persons is a sacrament (Can. 1012); and it is the contracting parties themselves who, by exchanging their consent, are the ministers of this sacrament.² It is for them a source of grace, if they receive it with the required disposition (Can. 1110).

1:—The civil power has the right to institute diriment impediments for the marriages of infidels. This right the Church reserves to herself when it is a question of the marriages of baptized persons.

2:—In order to receive the sacrament, it is enough if the contracting parties have the intention of making a marriage contract. Indeed, if they had the firm and predominating intention of excluding the sacramental character from the contract, since the separation of the two elements is impossible, there would not be in that case even a contract.

As to the *legitimate* marriage of infidels, it becomes a sacrament automatically on the reception of Baptism by the two spouses, without its being necessary to renew their consent.

It follows from this that marriage between baptized persons is regulated by divine law and by Canon Law; the competence of the civil power is restricted to the civil effects of marriage³ (Can. 1016).

3:—THE PROPERTIES OF MARRIAGE.—The Primary end of marriage is the birth and the education of children; the secondary end, the mutual assistance of the married couple and a remedy for concupiscence.

Its essential characteristics are unity and indissolubility, both based upon the natural law and augmented in Christian marriage by the sacramental character (Can. 1013).

But the Church does not prohibit the contracting of several successive marriages, even while she declares that chastity in widowhood is more honorable (Can. 1142).

4:—THE EFFECTS OF MARRIAGE.—Immediately upon the celebration of marriage, the married couple have mutual rights and duties in all that pertains to conjugal relations (Can. 1111).

3:—Canonists have given the matrimonial contract various appellations; the Code enumerates the principal ones (Can. 1015). Marriage is *valid* or *invalid*, according as the divine and ecclesiastical laws have been or have not been respected. Before the spouses have had conjugal relations, the marriage is called simply *ratum* (contracted); after these relations, it is called consummated (*ratum et consummatum*). When the spouses have lived together, the marriage is always presumed to be *ratum et consummatum* until proof to the contrary is furnished.

An invalid marriage is called *putative* when it was contracted in good faith by at least one of the parties. In this case the children are legitimate.

A valid marriage between non-baptized persons is called *legitimate*.

It is no longer permitted for one of the married pair to invoke the delay of two months which was formerly granted to the one who contemplated entering religion.

But adultery, or some other grievous sin on the part of one, would justify the other in refusing the marriage rights.

In case of *unquestionable impotency*, which has made its appearance after the contract was entered into, the married couple both lose the right to conjugal relations.

The wife, in the absence of special regulations, shares the legal status of her husband. She has the same domicile as he (except in case of legitimate separation); she is subject to the same tribunals; she may adopt his religious rite; and if she has neglected to declare her wishes as to her burial, she is buried in the tomb of her husband.

5:—Parents are bound, under pain of mortal sin, to provide for the religious and moral education of their children, to furnish them, so far as possible, with all that is necessary for their physical and intellectual development, and in a word to provide for their general welfare⁴ (Can. 1113).

It is, therefore, a serious obligation for parents to have their children baptized as soon as possible,

4:—The Code lays much stress on the obligation which rests upon the Pastor to instruct his people in all that concerns the sacrament of marriage and the rights and duties of the married pair. (Can. 1033). It would be well also to give the people a clear idea of the nature of diriment and prohibitive impediments, their variety, and the conditions which the Church attaches to the granting of dispensations.

to teach them the elements of the Catholic faith, to see that they receive Communion as soon as they attain the use of reason, and to send them to Catholic schools.

When the time comes for their children to make the choice of their state of life, parents must not oppose the religious vocation of their children, nor insist on their entering a state of life that is repugnant to them.

6:—Another effect of marriages is the legitimacy or the legitimization of the children. *Legitimate* are the children who are conceived *or born* of a *valid* or even merely *putative* marriage, unless the parents, at the time of the conception of the child, were under an impediment of Solemn Vows or Sacred Orders⁵ (Can. 1114).

Legitimized by the marriage of their parents are the children who were born before that marriage, provided that the parents are capable of validly contracting marriage either at the time of the

5:—It is comparatively easy to establish the fact that a child is the son of his mother, and that at the time of the child's birth the mother was married. As to paternity, however, it can only be presumed, and in accordance with the adage of the Roman law admitted by the Code, it is the husband of the mother that is presumed to be the father of the child, unless there is evident proof to the contrary.

In case of doubt, we are to presume the legitimacy of children who are born at least six months after the celebration of the marriage or within ten months after the cessation of conjugal life (Can. 1115).

In practice, when a child is presented for baptism, we must presume that it is born of the husband of the mother, and it is to be recorded in the Baptism Register under his name unless there is certain proof to the contrary, such as, for instance, the absence of the husband from the 10th to the 6th month preceding the child's birth, or his clearly established impotency. The testimony of the mother, declaring that she had been guilty of adultery, would not be sufficient proof of itself.

child's conception, or during the period of gestation, or at the time of the child's birth⁶ (Can. 1116).

In this case, the legitimatized children are equal in all respects to the legitimate children, except in cases where the law stipulates to the contrary (Can. 1117). Thus, for instance, the Code excludes from the dignity of the cardinalate, of the episcopate, and of Abbacy or Prelacy *nullius*, all children who are legitimized by the marriage of their parents (Can. 232, §2, 231, §1, 320).

As for children legitimized by pontifical rescript, the favor may contain more or less important restrictions.

6:—When there is no impediment between the parents, the subsequent marriage always legitimizes the children. If, on the contrary, an impediment existed and was not removed by a dispensation before the birth of the child, the Holy See must be asked to legitimize the children at the same time that it is asked for the dispensation necessary for the marriage, since the rescript of dispensation does not *ipso facto* include the legitimization of the children who are already born.

On the other hand, in cases where the Ordinary dispenses by virtue of the powers which the Code accords him or which he has received by an indult, the dispensation includes the legitimization of the children, born or to be born, excepting always children born of adultery or sacrilege (Can. 1051).

Record must be made in the Marriage Register of the legitimization of the children, stating for example, that Mr. X. declares that the son or daughter of his wife is truly his child and that he acknowledges it as such. This legitimization should then be written in on the margin of the baptismal record. If the baptism took place in another parish, the Pastor there must be notified and asked to make the entry.

Part First

The Preliminaries of Marriage

The Celebration of Marriage

Chapter One

BETROTHALS

7:—The decree *Ne Temere* had already done much to clarify and simplify the abundant and confused legislation of the Decretals on the subject of Betrothals. In the Code, one single Canon contains the whole subject matter: “In both the *forum externum* and the *forum internum* a promise of marriage, unilateral or bilateral, is valid only if it is made in writing,⁷ signed by the contracting parties and by either the Pastor, the Ordinary,⁸ or two witnesses.—In cases where one of the contracting parties does not know how to write or is physically unable to do so, this fact must be mentioned, and a second or third witness added to those already demanded by the law.” (Can. 1017).

Before the decree *Ne Temere*, Betrothals were a simple natural contract consisting of a mutual promise of future marriage. The new Law requires that these promises be made *in writing* and that they be attested by signatures.⁹ If the formalities enumerated above are lacking, the Church does not attach any value to betrothals either before her tri-

7:—It is not necessary that the contract be drawn up by the parties themselves. The Congregation of the Council (July 27, 1908) directed that it should be dated; but it does not seem that that clause is binding under pain of nullity.

8:—Reference here is to the Pastor or the Ordinary of the place where the contract is made; neither of these can delegate another priest.

9:—It is necessary that the parties themselves and the prescribed witnesses shall be present at the signing of the contract.

bunals *nor even in the forum of conscience*; verbal promises do not entail any obligation whatsoever.¹⁰

8:—This Canon announces yet another simplification which is of great importance: “The betrothal contract, even when valid and even when there is nothing to prohibit the execution of the promise, does not confer any right to bring legal action to compel the celebration of the marriage. Nevertheless, the party who considers himself to be aggrieved by the rupture of the betrothals, may bring suit to make the other pay for the damages which he considers himself to have suffered.”

In conscience, a *valid* contract of betrothal entails all the consequences of natural justice which a promise produces; the betrothed have promised to marry each other, they must marry each other, unless some new circumstance (mutual consent, the infidelity of one of the parties, an unforeseen change in the circumstances, etc.) releases them from their promises.¹¹

They must marry each other, but no tribunal can compel them to do so; the legislator, without positively encouraging the faithful to disregard the be-

10:—Verbal betrothals are null, just as a marriage is null which is celebrated without the presence of the witnesses prescribed by the law.

11:—This is the rule of procedure which the Confessor must impose on a penitent who is bound by a regular betrothal contract. However, if this would entail serious inconvenience, it would be better to make him promise to secure the release of the other party, by means of the offer of a compensation, if necessary. In case of refusal, the Holy See could release him from his obligations.

trothal contract,¹² but desiring, no doubt, more fully to safeguard the freedom of the sacrament of marriage has stripped this contract of all its former canonical effects.¹³

9:—In the old legislation, so long as the betrothal contract subsisted, it was forbidden for the parties to contract marriage with anybody else.

This *prohibitive* impediment no longer exists. This is the conclusion which flows from the above Canon. And moreover, Betrothals are not found in the list of impediments.

10:—Another impediment—*diriment* in this case—styled the impediment of “*publica honestas*,” forbade either of the betrothed parties to marry the relatives of the other in the first degree. The Code does not mention this impediment, and hence it is suppressed.

This is all that is necessary to say on the subject of betrothals. From what has been said it is evident how little importance they possess henceforth from the canonical point of view.

12:—The Church recognizes, on the contrary, the utility and the advantages of this contract, and it will be well to encourage the faithful to return to the traditions of their fathers. Betrothals, freed in these days from the inconveniences of the former legislation, are the natural preparation for marriage; by permitting the contracting parties to become better acquainted with each other, they may serve to prevent unfortunate marriages and the consequent unhappiness and divorce that too often follow.

13:—If one of the betrothed pair forsakes the other, this is not a cause of anything beyond a suit for damages.

Chapter Two

PRELIMINARY INVESTIGATION

11:—It is very important—and it is a grave duty of the Pastor—to see, before the celebration of the marriage, that there is nothing which can prevent the parties from validly and licitly contracting marriage.¹⁴

The Code, therefore, prescribes a preliminary inquiry and the publication of the banns. It leaves to the Ordinary the task of making the special rules to be followed; but it mentions some of the questions to be asked of the future spouses, and it calls attention to the necessity of securing their baptismal certificates (Can. 1019-1021).

12:—The inquiry should be made by the Pastor to whom the Code assigns the right of licitly assisting at the marriage (see n.50). It is better, however, that each of the contracting parties should be questioned by his own pastor. Usually it is when the contracting parties come to arrange for the publication of the banns that it is easiest to make this inquiry.¹⁵

14:—On several occasions (March 6, 1911, July 4, 1921) the Congregation of the Sacraments has insisted on the great need of vigilance when arranging for the marriage of strangers, especially of workmen who frequently change their place of residence. It declares that the very laudable desire to prevent concubinage or civil marriage does not authorize the Pastor to assist at a marriage without being certain of the baptism and the free status of the contracting parties.

15:—It is more in harmony with the desires of the Church to question the parties separately, especially with the idea of being certain of their freedom of consent. In any case, it is absolutely necessary, so far as is possible, for the parties themselves to be present and give the required information.

13:—THINGS TO BE ASCERTAINED.—The following are the most important.

1:—The names, surnames and Christian names, the quality or profession, the age, the present domicile, and, if necessary, the various previous domiciles; all this for each of the contracting parties.

2:—The names, surnames and Christian names, and the domicile of the parents.

3:—If one of the contracting parties is widowed, the name and the Christian names of the dead spouse.

4:—The existence or non-existence of any impediment, especially of relationship, affinity, marriage bond, or others which the particular status of the contracting parties might suggest.¹⁶

To secure this information, the pastor would do well to consult, in addition, the relatives or friends of the contracting parties, and make use of any other available means to ascertain the real status of the contracting parties.

In certain doubtful cases, the parties must be required to provide a certificate of their freedom furnished by the Ordinary of the place where they have been living for some time previous. The pastor may also, after reminding them of the serious

16:—It is very important, especially in doubtful cases, to remind the contracting parties of the consequences that lack of frankness might entail regarding their marriage.

nature of the act, require them to take an oath that they are free from all impediment.¹⁷

If he discovers an impediment, he must notify the contracting parties of the necessity of securing a dispensation; he will inform them as to the delay that this may occasion, and the expenses it will entail. He will immediately ask them for all the information required in drawing up the petition for the dispensation. (See n.192).

5:—The Pastor will make certain that their consent to the marriage, particularly that of the woman, is perfectly free.

6:—It is well also to make certain of the consent of the parents to the marriage. Altho their refusal is not an impediment, they have the right, in a matter which is so serious and which concerns the future of their children, to give their advice; and as a general rule, this advice should be followed.

If the parents refuse their consent, and if the contracting parties are *minors*, the Pastor must do his utmost to safeguard the rights of paternal authority in this matter; he must warn the children of the disagreeable consequences for them of a marriage entered into against the *lawful* opposition of their parents. And if his remonstrances prove unavailing, he should refer the matter to the Ordinary, ex-

17:—I, N , swear before God and upon the holy Gospels that I am not bound by the ties of matrimony, and that I know of no impediments to my marriage with N

plaining all the circumstances in the case, and then act according to his instructions¹⁸ (Can. 1034).

7:—Finally, the Pastor will inquire whether the contracting parties have sufficient knowledge of their religion to enable them worthily to receive the sacrament of marriage¹⁹; for instance, concerning the truths that are necessary *necessitate medii* or *necessitate praecepti*, the sacraments, the principal prayers, etc. (Can. 1020, §2). However, when the contracting parties belong to Christian families, well known to the pastor, such an inquiry is unnecessary.

To determine the degree of religious knowledge of the contracting parties, the Pastor may ask them in what parish they made their Solemn Communion, how long they attended the parish catechism class, etc.²⁰

14:—DOCUMENTS TO BE OBTAINED.—Besides the information referred to above, the Pastor must demand from the contracting parties a certain number of documents, which they must furnish before the celebration of their marriage.

18:—In this country, according to the civil law, minors must secure the consent of their parents. This renders the Pastor's task more easy.

19:—This was the recommendation of the Ritual long ago; and it was emphasized by the urgent insistence of Benedict XIV.

There are few, perhaps, who are so ignorant of the great mysteries of our faith as to be incapable of receiving the grace of the sacraments. But such cases are becoming less and less rare because of the absolute laicization of public instruction.

20:—It is the duty of the Pastor to give the contracting parties the elementary notions of religion that are indispensable for them; but if this summary instruction is impossible, he cannot for all that refuse to assist at the marriage.

1:—The Baptismal Certificate of each of them, if they were not baptized in the parish where they are to be married.

This is the most important document, and the Code makes it the express duty of the Pastor to secure it (Can. 1021, §1). As occasion requires he should demand also the Baptismal Certificate of the non-Catholic party.²¹

There are two chief reasons for this precept; the first is based upon the absolute necessity of baptism for the reception of the other sacraments; the second is, that since Canon 470 commands the inscribing in the Baptismal Register of the dates of acts relating to the religious life of the faithful (marriage, the reception of Holy Orders, etc.), the requiring of this Baptismal Certificate²² is a means of making certain that the contracting parties are not already bound by a previous marriage which still exists.

With the present-day facilities for securing divorces, the Church does well to multiply her precautions. Great care must therefore be taken, and the furnishing of a regular certificate, signed by the

21:—We may consider as valid the baptism that is given in the separated Oriental and Slavic churches; but many of the Protestant churches no longer believe in Baptism, or if they do, they administer it in a very doubtful manner. An inquiry must be made in each case, and in case of serious doubt, a dispensation must be secured *ad cautelam* for disparity of worship at the same time as the dispensation for mixed religion.

22:—This certificate very evidently must make mention of the previous marriages ordinarily recorded in the margin of the Register.

Pastor and as recent as possible,²³ must be the general rule.

Exceptions.—This rule may, however, have exceptions. For example, in case of the disappearance of the registers. In such an event, moral certainty that baptism has been received must be secured by means of the testimony of the parents or the sponsors; in doubtful cases, the Ordinary is to be consulted.²⁴

The Code itself has considered one of these exceptions. It dispenses from the formality of the baptismal certificate in the case of those who are contracting marriage at the point of death. In this case, if the usual proof is lacking, and if there is no reason for having suspicions, the Pastor will content himself with having the contracting parties take an oath that they have been baptized and that there is no impediment which would tend to prevent their being married (Can. 1019, §2).

2:—The certificates of the publications of the banns, given by the pastors of the various parishes where these publications have been made.

23:—Many Diocesan Statutes, like the civil law, demand that the certificate shall not be more than three months old.

The Pastor must not be too ready to believe the contracting parties when they say that they have tried in vain to secure their Baptismal Certificate. The simplest way to make sure is for the Pastor himself to write to the Pastor of the parish where the persons were baptized.

24:—The Code (Can. 779) admits as sufficient proof of the baptism, the testimony of one trustworthy witness, or even the oath of the interested party if he received baptism as an adult.—In certain cases, it may be necessary to administer Baptism conditionally.

3:—The record of the death of the previous wife or husband, when one of the contracting parties is a widower.

4:—The "Confession certificate."²⁵

5:—When it is a question of strangers, it is prudent to demand from them one or more certificates of their freedom to marry, or the various documents which will prove that they are not already married.²⁶

When the priest who blesses the marriage is not the Pastor of the contracting parties, he must in addition demand: certificates of dispensation, if there is any impediment to the marriage, and an *authorization* from the Pastor of the contracting parties.²⁸

In certain more difficult cases, when a doubt persists concerning the free status of the contracting parties, the Pastor must have recourse to the Ordinary and lay before him the difficulties of the case (Can. 1031, §1, n.3).

25:—The regulations of Diocesan Statutes regarding confession certificates is only directive; there is no law which prescribes in a general manner the making of confession before marriage. But the Church would have the contracting parties prepare as perfectly as possible to receive the graces of the sacrament; and it seems only right that the Ordinary should reserve to himself the right to indicate the method of procedure to be followed in the case of those who refuse to go to confession.

26:—A certificate of "free status" given by the civil authorities is not sufficient. There are some countries (Italy, for example), where religious marriages can be celebrated before the civil marriage; if the first was not followed by the second, the certificate of the civil authorities would only lead us astray.

28:—This *authorization* is necessary in order that the priest who is not qualified by the law may assist licitly in the marriage. It must not be confused with the *delegation*, which is indispensable for valid assistance when the officiating priest is a stranger to the parish.

15:—INSTRUCTIONS TO BE GIVEN.—During the course of his conversation with the contracting parties, the Pastor will avail himself of the opportunity to give them the proper advice to dispose them to the worthy reception of the sacrament of marriage.

He will urge them carefully to prepare for confession; he will earnestly exhort them to receive the Holy Communion. This is likewise the time to instruct them concerning the sanctity of marriage, and the duties of parents toward their children (Can. 1033).

These admonitions, needless to say, should be given in a manner that is in harmony with the condition of the contracting parties.

For the treatment of these delicate questions, the Pastor is ordinarily better qualified than the confessor, who is oftentimes pressed for time and occupied with other details. However, the confessor also has his part in the examination of the contracting parties; his investigations, very prudently conducted, must refer especially to the impediments of *Votum* and *Crimen*, and also to the dispositions with which his penitents are preparing themselves for the duties of their new state of life.

16:—CONFIRMATION—The Code points out in a special manner one of the points which should furnish matter for the admonitions of the Pastor, namely, the invitation to them to receive the sacrament of Confirmation, if they have neglected to receive it during their childhood (Can. 1021, §2).

For certain well disposed souls, this invitation may be an occasion for receiving very precious graces; more often, it is true, it will meet with no response; in such a case, the Pastor, while regretting this, will not insist to such an extent as to make of the lack of Confirmation a new impediment to marriage. Moreover, the most common opinion of the theologians is that the sacrament of the Confirmation is not obligatory *sub gravi*, unless the refusal indicates contempt for the sacrament, or is a cause of scandal. The Code, while declaring (Can. 787) that "it is not permitted for anyone to neglect to receive Confirmation," does not define the gravity of the obligation.

Chapter Three

THE BANNS

17:—THE BANNS—Except in cases of urgent necessity, it is a grave obligation for the Pastor to announce publicly the marriages that are about to be celebrated (Can. 1022), even when he is certain that there is no impediment.

When one of the parties is received into the Church a day or so before the marriage, the approved practice is to secure from the ordinary a dispensation from the Banns.

18:—BY WHOM ARE THE BANNS TO BE PUBLISHED? This obligation rests on the Pastor of the parish where the contracting parties have their domicile or quasi-domicile,²⁹ or, *when they have neither domicile nor quasi-domicile*, where they have resided for the month previous.

When the contracting parties are nomads (*vagi*), their Pastor is the Pastor of the place where they are at the moment; but, before assisting

29:—A domicile is acquired by the fact of residence in conjunction with the intention of not leaving the place unless unforeseen causes arise. A quasi-domicile is constituted by the fact of residence in conjunction with the intention of remaining in the place during the greater part of the year. (Can. 92). As soon as these two conditions are realized, the domicile or the quasi-domicile is at once constituted. The mere fact of living in a place for ten years or during the greater part of the year is enough to constitute a domicile or quasi-domicile.

If a person is established in a diocese, but does not always live in the same parish, he acquires a *diocesan* domicile or quasi-domicile; and in such a case his *proper Pastor* is the Pastor of the parish in which he is living at the moment (Can. 94, §3).

at their marriage, the Ordinary is to be consulted.³⁰ (See n.29).

Young people, so long as they are minors, that is, until they reach the age of 21 years, retain the domicile of their parents; but they may also acquire a quasi-domicile elsewhere³¹ (Can. 93). It is even admitted that when they come of age, children retain the domicile of their parents so long as they have some intention of returning thither.

19:—From what has been said above, it follows that, in certain cases, the banns are to be published in several places.

1:—They must be published in the parish in which the contracting parties are living, if they have acquired there at least a quasi-domicile.³² When they have neither domicile nor quasi-domicile elsewhere, a residence of one month is enough to justify the publication of the banns in the parish where they are living.

30:—The Ordinary usually prescribes that the publication shall be made in the place of origin of the *vagi* and in the place they have just left if they made any lengthy stay in that place.

31:—This is the case of students, soldiers, and domestics.

32:—With the permission of the Ordinary, the Pastor can be more lenient towards members of certain professions, for instance, the employees of public institutions, who are accustomed to change their place of residence quite frequently. The publication of the banns of their marriage in a place to which they have just come would be of no use.

It is well to remember also that a Pastor may have the right to assist at a marriage without publishing the banns; such a case would be that where the Pastor would bless the marriage of two Catholics who have lived in his parish for a month, but who have their domicile elsewhere.

2:—If they have equal claim of two domiciles, for instance, if they spend about the same length of time in the city and in the country, or if they have a domicile and a quasi-domicile, the banns must be published in both parishes.

3:—Minors (and also those who are of age, if they have not quit the family domicile with the intention of not returning to it) must have their banns published in the parish where they have a quasi-domicile, and also in the parish where the family domicile is.

4:—When the parties have lived for at least six months in other places after the age of puberty (14 years for the boys, and 12 years for girls), it may be required to publish the banns in those other parishes.

In such cases the diocesan statutes must be followed, or recourse had to the Ordinary. He can decide whether or not it is necessary to have the banns published, or whether the Pastor is to content himself with securing the necessary information regarding the free status of the contracting parties.³³ (Can. 1023, §2).

If there is some doubt as to whether an impediment has been contracted in some place *during a period of residence less than six months in length*,

33:—Ordinarily, when one or other of the contracting parties, who has recently come to the parish, has resided for a long time in another place, it is wise to insist that the regular publication of the banns shall be made in this latter place. In other cases, it will be enough to request of the various Pastors certificates stating that the parties did not contract marriage while they were living in those parishes.

direction as to how to act must be sought from the Ordinary, and the same procedure observed as above (Can. 1023, §3).

20:—THE TIME AND THE PLACE OF THE PUBLICATIONS OF THE BANNS.—The banns must be published on three *consecutive* Sundays or holydays of obligation,³⁴ in the church at the principal Mass, or even at another service at which there is a large attendance of the faithful (Can. 1024).

The text is quite clear. By the word “church” we are to understand the parish church, unless the parish Mass, for some reason, is said in a chapel.

Ordinarily the publication of the banns is made at the High Mass; but in case of oversight, it may be made at a low Mass or at Vespers, provided that the attendance of the faithful is sufficiently large.

It is not allowed to publish the banns at a week-day service, except for special reasons and with the permission of the Ordinary.³⁵

21:—THE FORMULA OF PUBLICATION.—It should contain all that may be required to identify the con-

34:—These feasts are the ones enumerated in Canon 1247, namely, Christmas, Circumcision, Epiphany, Ascension, Corpus Christi, Immaculate Conception, Assumption, St. Joseph, Sts. Peter and Paul, All Saints. On these days, even in countries where these feasts are not any longer of obligation, it would seem that publications of the banns may be made, provided that the attendance of the people at the Mass is considerable.

35:—Regularly, except in cases where the Ordinary has given permission to the contrary, the publication of the banns must not be begun until the dispensation from a known impediment has been asked and granted.

tracting parties, that is to say, their names and surnames, their domicile and that of their parents, etc.

It must not contain anything that would impugn the honor of the contracting parties, for instance, mention of the fact that they are illegitimate by birth.

22:—The faithful should frequently be reminded of the fact that there is a grave obligation ³⁶ for them to reveal, before the celebration of the marriage, the existence of any impediments of which they may be aware (Can. 1027).

The formula of the publication of the banns should, therefore, indicate the approximate date of the marriage, and should state whether the marriage is being published for the first, the second, or the third time.³⁷

It may close in this fashion: "Any person who may know of any impediment to this marriage is obliged, under pain of grave disobedience to the laws of the Church, to make it known to the Pastor."

23:—PUBLICATION BY POSTING AT THE CHURCH DOORS.—The Code authorizes the substitution for the ordinary method of publication, of another method, which is already in force in certain large par-

36:—The secret of the confessional, a professional secret, and at times even the fear of sustaining considerable damage, will suppress this obligation; but there may remain a certain obligation to notify the contracting parties who are affected by the impediment.

In certain cases the Confessor may ask for a dispensation from an occult impediment with or without the permission of the penitent.

37:—It would seem better to substitute the formula "there is the intent to marry" for the current formula "there is a promise of marriage," which would presuppose a regular betrothal contract.

ishes by virtue of an indult. This second method is the method of posting at the church doors.

In large parishes, this method of procedure does away with the inconveniences arising from an excessively large number of publications; but *the Ordinary alone* can authorize it, and he is the sole judge of the advisability of doing so.

When this method is followed, the notice should remain for *at least eight full days*; and during this time there must be two Sundays, or one Sunday and one holyday of obligation ³⁸ (Can. 1025).

24:—MIXED MARRIAGES.—In the case of marriages which are contracted with a dispensation from the impediment *disparitatis cultus* or *mixtæ religionis*, there must be no publication of the banns, unless the Ordinary has decided otherwise; and in this latter case, it is not allowed to mention the religion of the non-Catholic party (Can. 1026).

25:—DISPENSATIONS FROM THE BANNS.—The Code gives the Ordinary of the place, that is, the Ordinary of the place where the contracting parties have their domicile or quasi-domicile, the right to dispense, for a legitimate reason,³⁹ from the pub-

38:—A notice posted at the church door from Sunday morning until Monday of the following week is equivalent to three ordinary publications.

39:—In order to obtain dispensation from the three publications, a grave cause is required, such as the regularization of a marriage that is reputed to be valid, the celebration of a marriage of conscience, the celebration of a marriage at the point of death, or any other cause that is deemed sufficient by the Ordinary.

For a dispensation from one or two publications, it is enough if there is a legitimate cause for hastening the marriage; the mere whim of the parties is not a sufficient reason.

lications of the banns, even from those which are to be made in an alien diocese. This dispensation the Ordinary can grant personally or by delegate.

When there are several Ordinaries involved, that is, when the contracting parties, or one of them, belong to several dioceses, it is the Ordinary of *the place where the marriage is to be celebrated* who has the power to grant a dispensation.⁴⁰

In case the marriage is to be celebrated in a diocese to which *both parties are strangers*, the dispensation may be granted either by the Ordinary of their place of domicile, or by the Ordinary of their place of quasi-domicile (Can. 1028), *but not by the Ordinary of the place where the marriage is to be celebrated*.

When the contracting parties belong to different parishes, it is, ordinarily, the Pastor of the bride who is to secure from the Ordinary the dispensation from the banns.⁴¹

26:—THE CERTIFICATES OF THE PUBLICATIONS OF THE BANNS.—The Pastor who secures the preliminary information, or publishes the banns, must send a certificate to the Pastor who is to assist at the marriage. (See n.254).

40:—If the bride has her domicile in Faribault and a quasi-domicile in Chicago, and is married in Faribault, it is the Ordinary of the archdiocese in which Faribault is, who will grant the dispensation.

41:—This is quite logical, since, ordinarily, it is the Pastor of the bride who assists at the marriage. But when the marriage takes place in the parish of the groom, certain Diocesan Statutes direct that it is the Pastor of that parish who shall ask for the dispensation. The thing to do is to follow this rule if it exists.

Let us add that if there is any grave inconvenience in waiting for the dispensation of the Ordinary, the Pastor, after taking all the necessary precautions, may at once assist at the marriage.

The latter, *after* securing all the necessary information and *after* having ascertained that no impediment has been discovered, may proceed with the marriage.

However, in order to give the faithful an opportunity to file their objections, *an interval of three days* must elapse between the last publication of the banns and the celebration of the marriage,⁴² unless a reasonable cause justifies omitting this delay (Can. 1030, §1).

Most of the *diocesan statutes* need to be corrected on this point.

27:—THE REPETITION OF THE BANNS.—As a general rule, if the marriage is not to be celebrated within *six months* after the last publication of the banns, the banns must be published over again. Nevertheless, the Ordinary may rule otherwise (Can. 1030, §2). Therefore, in this matter, follow the *diocesan statutes*.

28:—WHAT TO DO IF AN IMPEDIMENT IS DISCOVERED.—

1:—*If the impediment is doubtful*, the Pastor will make a very careful investigation, scrutinizing the parish registers, questioning the contracting parties all over again, and also two reputable witnesses under oath, unless such an inquiry would be detrimental to the reputation of the contracting parties.

42:—If the last publication was made on a Sunday, the marriage should not be celebrated before the following Thursday.

He will, however, begin or continue publications; and if, after the inquiry, there still remain doubts in his mind as to the existence of the impediment, he will submit the case to the Ordinary (Can. 1031, §1) and obtain, if necessary, a dispensation *ad cautelam*.

In cases where it is a question of an impediment which cannot be dispensed from, for example, impotency, *doubt* must not hinder the celebration of the marriage.

2:—*Cases where the impediment is certain.* If it is an *occult* impediment, the Pastor must proceed with the publications and have immediate recourse to the Ordinary or to the Penitentiary, without mentioning any names, and so secure the necessary dispensation.

If the impediment is *public*, the Pastor, *before beginning the publications*, must secure the necessary dispensation. If the publications have already begun, the Pastor must continue them and appeal at once to the Ordinary (Can. 1031, §2).

In cases where this impediment is one for which no dispensation can be given, or one for which a dispensation is not usually granted, the contracting parties must be notified at once of the impossibility.

29:—THE MARRIAGE OF WANDERERS (*Vagi*).—When it is a question of the marriage of persons

43:—This rule likewise applies to those persons who have been living in the parish for a month (and at whose marriage the Pastor has the right to assist), but who do not intend to remain in the parish.

who have no domicile or quasi-domicile,⁴³ the Pastor must not, except in cases of necessity, assist at such marriages until he has secured the permission of the Ordinary (Can. 1032).

The Ordinary will doubtless direct that the person or persons in question shall be searchingly interrogated to ascertain, besides the information spoken of above (n.13): the place of birth, the different places where he has lived, the certificates that may serve to prove that he is single or widowed.

It will be wise to write then to the pastors of the birthplace and of the places where the person has lived for the longest time, to learn whether or not the contracting parties are bound by the bond of a previous marriage.

Chapter Four

THE MARRIAGE CONTRACT

Marriage is formally constituted by the mutual consent of the contracting parties. But this natural contract has been made subject by the Church to certain external formalities which are absolutely or relatively necessary in accordance with her regulations.

We shall consider now the various conditions of matter and form which safeguard the validity and the liceity of the marriage contract.

ARTICLE I

The Matrimonial Consent

31:—The matrimonial consent consists of an act of the will by which the contracting parties give mutually to each other *a perpetual and exclusive right* to the accomplishment of those acts which tend to the procreation of children (Can. 1081).

This consent is indispensable, and cannot be supplied either by the authority of parents or by the authority of the Church;⁴⁴ moreover, any cause which would vitiate this consent radically, would bring about the nullity of the marriage.

44:—It follows from this that children and insane persons whose insanity is absolute and complete, being without the use of reason that is necessary for any contract or human act properly so called, are therefore incapable of contracting marriage. An insane person is irresponsible. (Cont. on page 40).

1:—*The Defects of the Matrimonial Consent*

32:—These defects are genuine impediments to marriage; we shall enumerate briefly those specified by the Code, that is, those which occur most frequently and which prevent the very existence of the matrimonial consent or its free emission.

33. 1:—IGNORANCE.—*Null* is the matrimonial consent given by persons who do not understand that marriage is a permanent union of a man and a woman for the purpose of having children (Can. 1082).

The first end which the Creator had in view in instituting marriage, was the propagation of the human race; the ignorance of this end is a cause of nullity; and the reason for this is very simple. To give one's consent to an undertaking, is to will at one and the same time the end of that undertaking and the means to attain it; can one do this if one is ignorant of both the end and the means?

During an interval of lucidity, a marriage would be illicit but valid. In case of doubt as to this point, the permanence of the insanity is to be presumed; for a calm and reasonable demeanor does not always prove that reason has returned.

The insane person whose insanity is partial could in all probability contract marriage if his ideas on this matter are sane. But it would be more prudent to follow the example of the civil laws and consider such a person as irresponsible.

Deaf-mutes and those who have been blind from birth are ordinarily classed with the children who have not the use of reason, and are considered as incapable of marrying. Those who have been deaf-mutes from birth but who have an understanding of the morality of their acts, can validly and licitly contract marriage.

Finally, a man in a state of complete drunkenness (his will practically annihilated, his mind clouded with hallucinations) can legitimately be classed with the insane; his marriage is null.

Nevertheless, it not required that the contracting parties know the exact nature of the conjugal relations, that is, the necessity of the *copula carnalis* for the begetting of children; it is enough if they know that marriage has for its purpose the constitution of a family. In this case their will has for its object the contract considered in a very general manner, as it is accepted by the people generally, and that is enough to safeguard the validity of the marriage.

The Code adds that this ignorance is not to be presumed after the age of puberty. And so boys after fourteen, and girls after the age of twelve, are considered, in the external forum, as possessed of sufficient knowledge on this point.⁴⁵

34: 2:—ERROR—Ignorance is a lack of knowledge; error is a positive judgement whose concept is not in harmony with the reality.

45:—In reality, there may be in this matter cases of ignorance that are complete or relative, and it is wise not to permit young men and especially young girls to enter the married state without learning (*saltem non ignorant*, says the text) that this contract is a union whose purpose is to continue the work of generation. This is one side of the complex and variously treated question of education in purity; I do not attempt to solve it, but I will say that we must not, under the pretext of safeguarding at all costs the virtue of our young people, expose them later on to the danger of making marriages that are null, or to revelations that are brutal and revolting. (Ami du Clergé, '19, 850).

Let us say, however, that in a case of this kind, the marriage being null simply because of the lack of internal consent, an internal act of consent is enough to make it valid. But if, because of the persistent refusal of the ignorant party, the consummation of the marriage is impossible, there would be grounds for having recourse to the Holy See to obtain a dispensation "*super rato*."

Error may be such as to affect the validity of a marriage; at other times it may not prevent the consent from relating to the proper object of the contract, and in such a case it would not be an impediment.

It is very difficult to determine the precise moment when error becomes invalidating. The Code gives rules for solving the various cases (Can. 1083-1085). Here are the practical conclusions:

35:— *The Marriage is null:* a) when the error refers to the person, that is, when one of the contracting parties gives his consent to a person who is not the person whom he thinks he is marrying.

Cases of this kind are extremely rare; outside of cases of marriages by proxy, this error is hardly possible unless the marriage takes place in the dark, or unless the deceived party is blind, or is not familiar with the features of the person he wishes to marry and is fraudulently assured that the person present is his intended spouse.

b) when the error refers to a quality which is so closely inherent in the person, in the mind of the contracting party, that it is morally identified with the person.⁴⁶ —It is very difficult to say in what cases a quality, which is a thing that

46:—"The error is sufficient" says Esmein, I, p. 316, "whenever the supposed qualities had the effect of endowing the party with a civil and social individuality in the eyes of the other party, which individuality was quite different from that which in reality belonged to him."

is quite accidental, can thus come to dominate and absorb the substantial consideration of the person. But it is the opinion of the canonists that such cases can occur but rarely. And still more rare are the cases in which it is possible to prove the nullity of the marriage from this defect.

c) when one of the contracting parties, being free, marries a person whom he *thinks to be free* and who is found to be a slave in the full sense of the word.⁴⁷

The marriage would be valid if this servile condition was known to the free person.

36: *The marriage is valid:* a) when the error refers merely to an accidental quality of the person (health, fortune, beauty, age, situation) which is not in the minds of the contracting parties the peculiar and exclusive object of the marriage contract.⁴⁸

This quality may, indeed, have been the *occasion* of the marriage, but it does not destroy, in the mind of the contracting parties, the substantial notion, generally admitted, of the marriage contract.

47:—This rule retains its practical utility in missionary countries where slavery is still in force.

48:—It is the substance which determines the consent. The qualities are to be looked upon as stimuli which facilitate the consent. And so the natural presumption is in favor of the marriage that has been contracted with a specified person.

There are many accidental errors constantly occurring as regards the contract; and if we were to see in them so many causes of nullity, there would be a multitude of marriages that were null and void; such errors give grounds to the married pair to accuse each other of trickery, but they do not affect the very essence of the contract.

b) The same thing is true when the errors concerning the essential properties of marriage (unity, indissolubility, and sacramental character), are merely incidental to the state of simple defective knowledge, and do not form the fundamental and determining cause of the consent.

A man may be ignorant of the fact that divorce is forbidden by the law of Christ; he may even start from this error to arrange a marriage and give his consent thereto, and yet not exclude in any way, by a positive act of the will, this essential property of marriage.

It may be that he would do so if he thought of it. But we are concerned here with what is, and not with what is possible. As a matter of fact, there is in his mind only a "simple error," which does not substantially vitiate the contract.⁴⁹

c) Finally, the consent *may be sufficient* even when it is accompanied by the conviction (true or false) of the nullity of the marriage.

The contracting parties may believe, rightly or wrongly, that they are bound by a diriment impediment, and with that conviction in their mind, exchange their mutual consent. We are supposing that they have the intention of really giving the consent required by a normal union, and that they are not intending to enter into simple concubinage; the marriage in this case is valid, if

49:—Wernz, n. 228; Gasparri, *De Matrimonio*, n. 792.

the impediment which they supposed to exist does not really exist.⁵⁰

37: **REMARK:**—However, in these various hypotheses, the marriage would be null if the motive of error were, in the mind of the contracting parties, the sole and absolute reason of their consent, the condition *sine qua non* of the marriage. The contract concluded in this fashion would no longer be a marriage as Our Lord instituted it. This is, moreover, the clearly stated teaching of the legislator. There must be absolute harmony between the intention of the contracting parties and the essential conditions of the matrimonial contract.⁵¹ There would be lack of harmony and consequently nullity, if *by a positive act of the will*, the contracting parties explicitly excluded either the marriage itself, or the right to conjugal relations, or one of the essential qualities of marriage⁵² (Can. 1086, §2).

But *in the external forum*, we must always presume that the internal consent corre-

50:—Even if this impediment did exist, the consent would retain its force and the marriage could be revalidated by a dispensation *in radice*.

In order that the validity of the consent in this case may be admitted, we must suppose either that the contracting parties did not understand the full import of the impediment, or that they did not advert to it, or at least that they intended to give to their consent all the force that it would have in a case where the impediment, for any reason, would not produce its effect.

51:—The explicit and positive intention of not binding oneself with regard to some essential point (indissolubility, unity . . .) would amount to the same thing as the lack of consent. But this intention is ordinarily very difficult to prove.

52:—In this case there cannot be any dispensation to revalidate the marriage; the only means of revalidation is the giving of a new consent by the party who is subject to the error, provided that the other party has not retracted his consent.—This new consent will be public, private, or simply internal, according to the circumstances of the case (cf. n. 214).

sponds exactly with the meaning of the words or signs used to express it at the moment of making the contract (Can. 1086, §1).

The party who claims that there was lack of harmony between the internal consent and the external consent, is compelled to prove his contention; this is not impossible, but it is usually very difficult.⁵³

Even in the internal forum we must not too readily believe in the nullity of marriage. When living together has not brought happiness, married people are apt to seek any means of ridding themselves of a yoke which has become insupportable, and where there was in reality only an error concerning an entirely accidental quality, they are inclined to see a veritable condition *sine qua non*. (Wernz, n.229).

38: 3:—VIOLENCE AND FEAR. It is evident that a fear which would disturb the mind to such a degree as to suppress the use of reason, would thereby destroy the consent which is necessary to marriage.

And the Church has, moreover, declared that in certain cases, fear, even tho permitting the sub-

53:—In order to prove the simulation, an inquiry must be instituted bearing on:

1:—the probable motives which could have led him to dissimulate;

2:—the possible situations or the special circumstances in which the deceiver found himself, before, at the time of, and after his sinful act (promises given to another person, a marriage without solemnity, etc.). It is necessary that the findings resulting from this inquiry should be very clear and of great weight to enable the tribunal to reach a moral certainty of the simulation.

sistence of a consent that is sufficient *de jure naturali*, may be the cause of nullity in a marriage. While emphasizing the claims of the natural law, she insists on safeguarding the liberty of the contracting parties.

39:—That fear may become a diriment impediment, it is necessary that it should be truly grave,⁵⁴ that it should arise from some cause that is extrinsic⁵⁵ and free, and that it should be unjustly provoked;⁵⁶ in a word, that it should be a fear which compels the person affected to consent to the proposed marriage in order to rid himself of the fear (Can. 1087, §1).

40:—Any other sort of fear, even tho it is the cause of the matrimonial consent, does not entail the nullity of the marriage (Can. 1087, §2).

54:—This gravity is determined by the nature of the threats which caused the fear, the character of the person who made them and of the person to whom they are made. Due account must be taken of the age, sex, and character of the persons.

For certain timid characters, *reverential fear*, that is, the fear of displeasing one's parents, taken in conjunction with repeated urgings, threats, etc., may become a sufficient cause of nullity.

The same is true of the fear that arises from a danger which threatens a person who is very dear to one of the contracting parties if he refuses to consent to the marriage.

These examples serve to show with what care the Church watches over the freedom of the contracting parties. Fear is one of the motives most frequently invoked to secure a declaration of the nullity of a marriage.

55:—The fear of not having the necessities of life, the danger of incontinence, the fear of being damned, which would induce a person to marry, would not be invalidating causes.

56:—Fear is unjustly aroused if one is forced to marry when he is under no obligation to obey, or if the compulsion is brought to bear by a person who had no right to do so.

As in the case of *error*, it is difficult to know the exact degree in which a motive of fear becomes sufficient to constitute an impediment. Each case demands careful examination whose purpose shall be to ascertain, by means of the testimony of witnesses and by the consideration of circumstances of detail which are capable of establishing a moral certainty: a) the reality of the violence or the fear; b) their truly grave character. The proof of the existence of fear is difficult to establish, because of the interior character of the emotion.

This is, of course, the business of the judge in the *forum externum*. The Pastor who comes across a case of this kind will have naught to do but to see to the revalidation of the marriage if the fear has disappeared. If the fear still persists, the case must be submitted to the Ordinary.⁵⁷

42: The Code gives the following rules for determining the value of the conditions appended to the contract:

1:—A condition which refers to a future event which is necessary, or impossible,⁵⁸ or which is shameful but not opposed to the substance of the marriage, must be considered as non-existent (Can. 1092, §1).

57:—This is only an impediment of the positive law, but the Church never grants a dispensation from it. A marriage that is null on this account cannot, therefore, be revalidated except by a new consent, public, private, or internal, according to the circumstances. When the impediment remains occult, we may consider as equivalent to consent, the ordinary signs of conjugal love and the fact that the parties freely live together.

58:—"I marry thee if the sun will rise tomorrow"; "I marry thee, but on condition that thou wilt take me to the moon."

This hypothesis is rather improbable. If, however, it is *proven* that an impossible condition were seriously appended to the contract as a condition *sine qua non*, we must conclude that there was only a pretense of consent; and under the circumstances, the shameful condition, v.g., one which would impose on one of the contracting parties the commission of a murder or a theft, would have been the effect of suspending the consent.

2:—A condition *de futuro* which is contrary to the substance of the marriage, makes the contract invalid (Can. 1092, §2), for it excludes the Christian concept of marriage.

Such would be the stipulation, *formally expressed*, of being divorced, of not rendering the marriage *debitum*, of practicing onanism or abortion.⁵⁹ In these various cases, the contracting parties do not intend marriage as Our Lord instituted it; therefore they are not married.

3:—A legitimate condition, relating to the future, suspends the effect of the matrimonial consent until the condition is realized (Can. 1092, §3).

For example: "I contract marriage with you, but only on condition that I receive a certain sum

59:—We have already seen that a simple error concerning the characteristics of marriage does not destroy the validity of the contract.

It is not always easy to determine the real character of the condition attached. For this purpose we must carefully examine the words which were used to express the consent, as well as the formulas or ceremonies employed in the heretical sect or the religious body to which the parties belonged; then we must weigh the facts that might have some relation to the mutual declaration of consent or to the form that was given it.

of money," or "on condition that a certain person consents to my marriage."

When the condition is fulfilled, the consent at once produces its full effect, and does not need to be renewed.⁶⁰

However, in a case where the condition placed to the marriage is the following: "If we secure the necessary dispensation," there must be, after the dispensation is obtained, a new consent on the part of the contracting parties. This is, at least, the common opinion; the first consent would be worthless, since it is given by persons who are incapable of contracting marriage.

4: When the condition relates to the present or the past, the marriage is valid or invalid according as, it is in fact realized or not (Can. 1092, §4).

Cases of this kind are more frequent. A young man contracts marriage with a young woman on the formal condition that she has not a certain serious sickness; if he has been deceived, he may secure a declaration of the nullity of his marriage.

It is not even necessary that this condition was formally expressed at the time of the contract; it is sufficient if it was made virtually, by means of a previous declaration, *capable of being proven*

60:—In practice, this case is well nigh chimerical.

It is evident that, in a case of this kind, the use of the marriage rights would be forbidden until the verification of the condition.

And if, in the interim, the parties decided to contract marriage *simpliciter*, they should renew their consent either *in facie Ecclesiae*, or privately, according as the making of the condition was public or secret.

and not withdrawn, for example a statement of this kind before witnesses: "I would never marry that person if I knew that he was a Freemason," or "I would not give my consent if I knew that this girl was illegitimate." If the examination succeeds in proving that it was a question of a condition *sine qua non*, and that the condition was not realized at the time of the making of the contract, the tribunal would give a decision of nullity. But the proof is very difficult, and the presumption is always in favor of marriage.

2:—*The Mutual Consent*

43:—The contracting parties must give their consent personally or by proxy.

1:—*The Normal Manner of Expressing the Consent.* The Code demands that the contracting parties be present. It excludes, therefore all marriage by letter.

They must express their consent verbally and audibly; only mutes are permitted to give their consent by signs (Can. 1088, §2).

2:—*Marriage by Interpreters.* The Code permits the making use of an interpreter, for example, for the marriage of foreigners, but there must be a serious reason for it, permission must be secured from the Ordinary when the circumstances allow the case to be set before him, and the Pastor must always make sure that the interpreter is

trustworthy (Can. 1090-1091). Of course, where it is possible to secure the services of a priest who speaks the language, this should be done.

3:—*Marriage by proxy.* The details of this class of marriages must be in conformity with the *diocesan statutes*. But it is always required, under pain of nullity, that the absent party shall give his proxy by special delegation, signed by him and specifying the person with whom the marriage consent is to be exchanged..

It is required also that the delegation be signed by the pastor or the Ordinary of the place where the sender lives, or by some other priest delegated to do so by the pastor or by the Ordinary. If the signature of this qualified witness is lacking, the signature of *two* ordinary witnesses will suffice.

If he who gives the delegation does not know how to write, mention will be made of this fact in the delegation, and a third witness must be made to sign it, under pain of nullity.

For the validity of the marriage, it is also required that the proxy shall *personally* discharge the delegation entrusted to him.

Finally, it is required that the delegation has not been revoked before the making of the contract. In case of revocation, or if the absent party had lost the use of his reason, the proxy would no longer have any power, even if he knew noth-

ing of the change that had occurred ⁶¹ (Can. 1089).

As in the case of marriages by interpreters the Pastor must, if possible, consult the Ordinary, and carefully verify the authenticity of the delegation given to the proxy ⁶² (Can. 1091).

ARTICLE II

The Form Required

44:—The Church requires that the contracting parties exchange their consent before a priest authorized to receive it, and before two witnesses.

We shall see in what cases the Pastor can assist at marriages validly and licitly, and what exceptions there are to the rule which demands his presence.

1:—Conditions Required for Validity.

45:—ORDINARY POWER.—Only those marriages are valid which are contracted *before the Pastor*⁶³ (or the Ordinary) of the place where the marriage takes place (or before a priest delegated by the

61:—In this case the wills of the contracting parties were not brought to bear simultaneously on the object of the contract.

But, after the celebration of the marriage, if a doubt arises concerning its validity, all the presumption is for the existence of the bond, and in order to dissipate that presumption, it would be necessary to furnish a juridical proof that the revocation of the mandate took place at the proper time.

62:—It is not necessary *ad validitatem* that the proxy should be of the same sex as the person he represents, nor even that he should have attained the age of puberty.

63:—Since the publication of the Code, a person must be a priest in order to be a Pastor.

Pastor or the Ordinary), and before at least two witnesses.⁶⁴ (Can. 1094).

This is the same rule as that formulated by the decree *Ne Temere*, which transformed the former personal competence of the Pastor into a *territorial competence*.

Henceforth, therefore, it is the place which determines the act; outside the limits of his parish, the Pastor cannot, without special delegation, *validly* assist at the marriage of his own parishioners. On the other hand, within his parish, he can *validly* bless the marriage of all those, *parishioners of his or not*, who present themselves before him ⁶⁵ (Can. 1095, §1, n.2).

The “quasi-pastors” of Vicariates and Prefectures Apostolic have the same powers as ordinary Pastors. The same holds good of vicars who have the same powers as pastors, for instance the vicar of a chapter, the vicars (*adjutores, substituti, oeconomi*) appointed by the Ordinary to take the

64:—The law does not require any special qualities for these witnesses. It is necessary, however, that they should have attained the age of puberty, that they should understand what is taking place, and that they should be able to testify concerning the act accomplished.

It is not even necessary that they should have been specially designated as witnesses; it is enough if two persons out of those present are willing to certify to what has been done. But, so far as is possible, and unless serious inconvenience would result, we must not admit as witnesses, non-Catholics, excommunicated persons, persons guilty of perjury, persons who have been declared *infames*, and all others whose evil manner of life makes them unfit for this office. Men should be chosen in preference to women.

65:—The Ordinary enjoys, in the diocese, the same competence as the Pastor enjoys in the parish.

The Vicar General, the Vicar Capitular, the Administrator Apostolic of a diocese are all classed with the Ordinaries.

place with full powers of a pastor who is ill, or absent, or dead.

As to *vicarii cooperatorii* (ordinary assistants) they need at least a general delegation (cf. n.48).

46:—This right to assist at marriages is enjoyed by the Ordinary and the Pastor only from the moment when they enter into possession of their benefice,⁶⁶ or when they begin to exercise their functions; and they may be deprived of it by a public sentence of excommunication, interdict, or suspension *ab officio* (Can. 1095, §1, n.1).

The Code demands, moreover, that the Ordinary or the Pastor *demand and receive* the consent of the contracting parties, without being constrained to do so by violence or fear (Can. 1095, §1,3).

There must be therefore, on the part of the priest, a positive act, sufficiently demonstrative (words or gestures), which is a genuine request for the expression of the consent of the contracting parties. It follows from this that forced or simply material assistance on the part of the priest would not be sufficient for the validity of the marriage; and so, all violence or fear, ⁶⁷ just or unjust,

66:—This taking possession is performed by the Bishop in conformity with Canon 334, §3; in the case of the Pastor, it is done in conformity with the rules established for each diocese. The Ordinary can dispense from these formalities, but the dispensation must be given in writing; and this document then takes the place of the formal entry into possession (Can. 1444, §1).

The Vicar General has no need to "take possession"; his nomination by the Bishop is enough.

67:—Here, very evidently, there is reference to a grave fear. It would seem, moreover, that the fear of a penalty which might be imposed by the Ordinary, or the fear on the part of the contracting parties of being denounced to the authorities, would not destroy the validity of the marriage.

would be a cause of nullity.⁶⁸

On the contrary, the marriage would be valid if the presence of the priest was secured by trickery.

47:—Even for mixed marriages, the Pastor must put the ordinary questions. Henceforth the *passive assistance* consists merely in the omission of all solemnity, and in particular of all blessings.

48:—DELEGATED POWER.—The Pastor and the Ordinary, who have the right to validly assist at a marriage, can also permit another priest to validly assist at it, each within the limits of his territory⁶⁹ (Can. 1095, §2).

Therefore, when a marriage is celebrated within the limits of his parish, the Pastor can delegate a strange priest; and this *delegation* is necessary for the *validity* of the marriage. On the other hand, when his parishoners wish to be married in some other parish, the Pastor does not give a delegation, but simply an *authorization*, to the priest who blesses the marriage; and this authorization is necessary for the *liceity* of the marriage.

49:—But the law demands that this delegation shall be given to a certain specified priest for a cer-

68:—Chaplains who are exempt from parochial jurisdiction have the same power as Pastors; but in our country they do not usually receive all the curial powers.

69:—Vicars (*adjutores, substituti, oeconomi*), appointed by the Ordinary to take the place, *with full powers*, of a Pastor who is ailing, absent, or dead, have also the right to delegate (A.A.S., 1924, p. 114).

tain specified marriage. Without this precaution, the delegation is *null*.⁷⁰

The delegation must be *explicit*; a presumed or tacit delegation would be null. It is also necessary that the delegation has not been revoked, and that the delegated priest has not renounced it. Finally, the delegated priest must proceed in accordance with the rules of the law in the execution of his mandate, and he must observe its limitations; he must not forget, in particular, that the delegation is good only in the territory of the one who gives it.

It is not permitted to give a habitual delegation to a priest for all the marriages without distinction which may take place in a parish; the only ones to whom this general delegation can be given⁷¹ are the *vicarii cooperatorii*, for the parish to which they are attached (Can. 1096, §1).

70:—The Code does not require the delegation to be given in writing.

71:—It would not be enough, therefore, to merely say to a priest: "I authorize you to assist at all the marriages that will occur in my parish"; or to the faithful: "Get any priest you please to assist at your marriage." It is necessary to specify the priest delegated; this may be done by saying either: "Rev. Father X . . .," or "the Pastor (or, the assistant pastor) of the parish of . . ."

Nor would it suffice for the Pastor to say to the Superior of a religious house that for a certain marriage that is to take place on the following Sunday in a chapel of his parish, he delegates *whatever priest the Superior may appoint* to go there to say Mass on that day in that chapel (A.A.S., 1924, p. 115).

N.B.:—In conformity with the general rules on subdelegation, a vicar that is delegated either by the Ordinary or by his Pastor to assist at all the marriages in the parish, can, unless the contrary is plainly stated, subdelegate in a particular case. It is seemly, however, to leave this privilege to the Pastor.—On the other hand, a delegated power for a particular case cannot be subdelegated except by the explicit permission of the delegater (Can. 199).

(Note continued on page 58)

When a pastor goes away for a vacation which will last for more than a week, the Code compels him to provide a substitute who must be approved by the Ordinary. This approbation is absolutely necessary—and sufficient—to enable the substituting priest to assist without special delegation at the marriages which may take place in the absence of the pastor, and to give delegations for such marriages.

But it may happen that the pastor, for a serious reason and quite unexpectedly, may be compelled to go away from his parish suddenly, after having asked a neighboring priest to take his place. In such a case, he must inform the Ordinary of his departure as soon as possible, and give him the name of his substitute. In the meantime, the substitute, without other delegation, can assist at the marriages that may occur, and give delegation for them; but the Ordinary, if he sees fit, can withdraw this power (Commission for the Interpretation of the Code, July, 1922 and May, 1923).

Before giving special delegation to a priest for a marriage, the Ordinary or the Pastor must have done all that the law prescribes to make certain of the free status of the contracting parties (Can. 1096, §2). The Ordinary or the Pastor, in a

Let us add, finally, that the assistance of a non-qualified priest would be valid,—the Church supplying the jurisdiction even in the external forum,—either in the case of *error communis* on the part of the faithful, or in the case where the priest himself would have a positive and probable doubt, *de jure* or *de facto*, concerning his jurisdiction (Can. 209).

word, is the one who is responsible for the act that is to be accomplished.

2:—Conditions Required for Liceity

50:—Before assisting at a marriage, the Pastor must:

1:—Make certain of the free status of the contracting parties, by means of the publication of the banns, and of the preliminary examination (Can. 1097).

2:—Make certain that one or other of the contracting parties has a domicile or quasi-domicile⁷² in the parish, or at least that he has been living in it for a month past.

In this latter case, it is the material fact of the habitation that is of importance, no matter what may have been the intention of the person or his mode of habitation; an absence of some hours each day, or even frequent and prolonged absences during the course of the day would not destroy the continuity of the month, provided that the night was spent in the parish.⁷³

When it is a question of nomads (*Vagi*),⁷⁴ it is enough if they are living in the parish at the mo-

72:—As soon as the conditions required for the constitution of the domicile or the quasi-domicile are fulfilled, the Pastor has the right to assist at the marriage, even if the contracting parties have not, as a matter of fact, lived in his parish for a month.

73:—Before proceeding with the marriage, the Pastor must have recourse to the Ordinary or follow the diocesan regulations concerning proofs of the free status of persons who have no domicile (Can. 1032 & 91).

74:—We are to consider as "*vagi*" all those who have no domicile or quasi-domicile and who have not lived for a month in the parish.

ment; but in these cases a special permission from the Ordinary is required, even if only one of the contracting parties is a *vagus*.

3:—In cases where none of these modes of habitation enumerated above is realized, it is necessary to secure the *authorization* of the Ordinary or of the Pastor of the contracting parties, unless a grave cause dispenses from the necessity of doing so.

Except in cases of urgency, this step is required *sub gravi*. The pastor who would neglect to do this, must not keep the *jura stolae*; he is bound to send the offering on to the pastor of the contracting parties,⁷⁵ with the exception of the Mass-stipend and the fees paid to the employees of the church. Good faith is no excuse in this matter.

4:—As a general rule, the marriage should be celebrated before the pastor of the bride, even when the bride is a non-Catholic.

This regulation in all probability obliges only *sub levi*; and any reasonable motive of convenience or utility is enough to justify its non-observance; but the diocesan statutes may give added force to this regulation of the Canon Law.⁷⁶

3:—*Marriages Without a Priest*

51:—The assistance of a qualified priest is the normal condition required for the validity of a mar-

75:—If the contracting parties have several Pastors, the restitution must be made to the Pastor of the domicile of the bride.

76:—When the contracting parties belong to different Catholic rites, the marriage must be performed according to the rite to which the man belongs and before his Pastor, unless some special law decrees otherwise (Can. 1097, §2).

riage. But this ecclesiastical law has some exceptions:

1:—*In case of danger of death* to one of the contracting parties, that is, in case of serious sickness which will probably produce death, if there is not in the vicinity any pastor or other priest possessing the necessary delegation to whom it is possible to go without grave inconvenience, the marriage is valid and licit, provided that the contracting parties exchange their consent in the presence of two witnesses.

The part played by these witnesses is simply to assist at the marriage; they have not to ask nor receive the consent of the contracting parties, as the Pastor does.

2:—*Even under ordinary circumstances*, if the contracting parties reasonably judge that no priest possessing the necessary powers can come to the place where they are living *before a month has elapsed*, and that it will be impossible for them to go to where such a priest is within the same space of time without serious inconvenience,⁷⁷ they are

77:—There would be "serious inconvenience" if it were necessary to travel a long distance, or to risk serious danger in order to reach a qualified priest. The new Code does not require that this condition of affairs should last for a month.

In order to avoid suits of law, may we, relying on this ruling of the Code, advise the contracting parties when an impediment prevents them from appearing first before the civil authorities, to contract marriage before two witnesses only? Theoretically, we may answer in the affirmative; but because of the manifold drawbacks to this system, recourse must be had to the Holy See.

Let us remember, however, that *at the point of death* any priest can dispense the parties from the impediment of clandestinity and permit them to marry before two witnesses.

allowed to contract marriage in the same manner as above.

If this state of affairs changes suddenly and a priest possessing the necessary powers makes his appearance after the marriage has taken place, even then there is no reason to question the validity of the marriage.

In both these cases, if there were, in the place where the marriage took place, a priest who did not possess jurisdiction, he should be requested to take his place with the other ordinary witnesses. However, this act on his part is not at all required for the validity of the marriage⁷⁸ (Can. 1098).

This service may be asked of any priest, even of one who is under censure, provided that he is not *vitandus*. His presence will indicate more explicitly the sacred character of the marriage and will insure its validity, especially in cases where the contracting parties need a dispensation. Moreover, the priest, better than ordinary witnesses, will take the trouble to send notification of the marriage to the proper pastors.

78:—The marriage would be valid even if the parties were to go, *in fraudem legis*, to a district where it would be impossible for them to have a priest.

These ample concessions of the law are especially useful in missionary countries. They might be useful in time of religious persecution. But in ordinary times, with the present facilities for communication, the faithful, except in case of danger of death, can rarely find sufficient reason to consider themselves dispensed from the necessity of having recourse to a priest.

4:—The Subjects of the Law

52:—The Church can declare all baptized persons to be subject to the laws that she issues. In the present case, however, she makes some exceptions.

53:—THE FOLLOWING ARE SUBJECT TO THE PRECEDING REGULATIONS, as regards the obligation of contracting marriage before a qualified priest:

1:—All those who were baptized in the Catholic Church (see, however, n.54, No. 2), and all those who have been converted to the Church from heresy or schism, (even if, after their conversion, they relapsed into their former errors), when they contract marriage with individuals belonging to this same category.

We must class with these, children who were baptized in heresy, but whose converted parents have given them instruction in the Catholic faith from their infancy.

2:—All those mentioned in the preceding paragraph, when they contract marriage with heretics or infidels, even after having secured the necessary dispensation.⁷⁹

3:—Catholics of the Oriental rites, when they contract marriage with Catholics of the Latin rite, whether in the Orient, or elsewhere. (Can. 1099. §1).

⁷⁹:—The exception made for Germany by the Constitution "*Provida*" has been abrogated (Declaration of Card. Gasparri, March 30, 1918).

54:—THE FOLLOWING ARE NOT SUBJECT TO THIS LAW:

1:—Non-Catholics, heretics, schismatics, or infidels, when marrying amongst themselves.

Therefore the marriages of Protestants with Protestants or with infidels⁸⁰ are valid, provided, however, that they are not hindered by a diriment impediment other than clandestinity.

2:—The children of these non-Catholics or of these infidels, who, baptized for one reason or another in the Catholic Church, have grown up to maturity from their infancy (that is, before the age of reason) in heresy, schism, or infidelity, or without practicing any religion, when they are marrying non-Catholics or *persons of the same status as themselves*.⁸¹

The reason for this is that their apostasy is entirely material (for they have never voluntarily forsaken the faith), and hence should not put them in a worse condition than their parents (cf. n.112, note 2).

80:—If, therefore, a marriage of this kind has been dissolved by a heretical or even by a civil tribunal, a second marriage before the Church is not possible, except by a declaration of the nullity of the first marriage in conformity with the rules of Catholic procedure, or by having recourse to the Pauline Privilege; in this case, the second marriage would destroy the first.

81:—Children whose parents were baptized in the Catholic Church, no matter what may have been their origin or their education, or whose parents, after having been converted, lapsed into heresy or schism,—or children who, after reaching the age of reason, voluntarily joined the Catholic Church,—do not enjoy the privilege of this exception, and their marriage is null.

3:—Orientals who contract marriage with other Orientals⁸² (Can. 1099, §2), or with Protestants or infidels. Certain Orientals are, however, subject to the rulings of the Code. P. Creusen (Epitome, II, n.407) mentions the Ruthenians of Galicia.

ARTICLE III

The Ceremonies of Marriage

55:—The *essential ceremony* of marriage consists in the exchange of consent between the contracting parties, after the inquiry made by the priest.

But outside of cases of necessity, we must observe all the ceremonies prescribed by the Roman Ritual (tit. VII, c.2), or consecrated by laudable custom (Can. 1100); for instance, the special formulas of blessing, the blessing of *two* rings, etc.

Each Pastor, then, must follow the special rulings of the local ritual or of the diocesan statutes.

56:—The Pastor must, moreover, do his best to induce the contracting parties to receive the *solemn* nuptial blessing (either at the time of the marriage or later) altho the Church does not make this a strict obligation.

This blessing may be given a long time after the marriage, but only during Mass⁸³ (except by virtue of a special indult), and in accordance with the special rubrics of the Missal (Can. 1101, §1).

82:—It is admitted that the Orientals, that is, those who belong to an Oriental rite, are not bound by the general disciplinary laws unless this is explicitly stated. Even in the United States, two Orientals can validly contract marriage without the presence of the priest.

57:—When the rubrics permit the saying of the Mass *pro sposno et sponsa*, the priest must say this Mass,⁸⁴ which contains, after the *Pater*, the two prayers *Propitiare, Domine* and *Deus qui potestate*, which, together with the prayer *Deus Abraham*, which is before the customary blessing of the Mass, constitute the solemn nuptial blessing.

When the Mass of the day⁸⁵ is said, the priest inserts this blessing in the same place, and makes a commemoration of the Mass *pro sponsis*. This commemoration is said under the same conclusion with the prayer of the day; afterwards the other commemorations, if any, are to be said.

58:—In order to give this solemn nuptial blessing to the married couple, the priest must have the right

83:—A special indult is needed to give this blessing outside of Mass.

The solemn blessing cannot be given in a Requiem Mass.

When the contracting parties demand or receive this blessing after their marriage (even several years after), the priest says in their presence the Mass *pro sponsis*, which enjoys the same privileges as on the day of their marriage.

84:—If the contracting parties have not given any stipend for the Mass, the celebrant, unless the giver of the stipend has stipulated the contrary, can satisfy another intention by means of the Mass *pro sponsis*.

When there is more than one marriage being celebrated together, the tenor of the orations does not vary.

The Mass *pro sponsis* is a private votive Mass, without *Gloria* or *Credo*. After the special oration, the priest says the oration of the feast of the day, and the other occurring commemorations. If the office of the day is semi-double, it is not allowed to add to the three orations other orations out of devotion; if it is double, the third oration *de tempore* is omitted. At the end, the *Benedicamus Domino* is said, and the Gospel according to St. John (or the Gospel of a vigil, a feria, or a feast that has a strictly proper Gospel).

85:—That is, on Sundays, holydays of obligations, even if they are no longer observed by the people, on feasts of the first and the second class, on the vigils of Christmas, Pentecost, and Epiphany, during
(Note continued on page 67)

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to assist validly and licitly at the marriage, or must have a regular delegation (Can. 1101, §2).

There is no reason why one priest may not receive the consent of the contracting parties, and another priest say the Mass. But the blessing must be given by the priest who says the Mass.

59:—At second marriages the solemn blessing is not given, if it is the woman who is widowed and *if she received the blessing at her first marriage*.

Moreover, the solemn blessing is not given during the closed time, except with the special permission of the Ordinary.

In these different cases here considered, of course it is not the Mass *pro sponsis* that is said, for that supposes always the solemn blessing.

60:—For a legitimate reason, the Ordinary can permit this blessing to be given on any day and at any season. This permission includes permission to say the Mass *pro sponso et sponsa*, except on Sundays, holydays of obligation, doubles of the first and of the second class, the vigil of Christmas, Ash Wednesday, and all of Holy Week. On these days, the priest must merely make a commemoration of the Mass *pro sponsis* and insert the solemn blessing in the Mass of the day.

the privileged octaves of the first and the second order, (the octaves of Easter, Pentecost, Epiphany, and Corpus Christi), as also during the *forbidden time* (Acta, 1918, p. 332).

The *forbidden time* forbids not only the Mass *pro sponsis*, but also the solemn blessing and the commemoration of the Mass, unless special permission has been secured from the Ordinary (n. 60).

61:—*In mixed marriages* all sacred ceremonies and all solemnity are to be omitted, unless, for grave reasons, the Ordinary gives permission for some of the usual ceremonies. But he cannot, except by indult from the Holy See, give permission for the celebration of Mass (Can. 1102).

In the year 1925 the Commission for the interpretation of the Code, decided that it was forbidden to celebrate a private Mass which would constitute a complement of the ceremony.⁸⁶ It is not permitted, therefore, after a mixed marriage, to say Mass in the presence of the newly married couple and their guests, even tho they were not to occupy any special place in the church.

ARTICLE IV

The Time for the Celebration of Marriage

62:—Marriage is allowed at any time during the year (Can. 1108, §1).

The period known as the “closed time” or “forbidden time” prohibits merely⁸⁷ the solemn nuptial

86:—Regularly there should be nothing except the interrogation of the contracting parties by the priest and the exchange of their consent; and this should be done outside the church, and without any blessing or ceremony. It may be tolerated if the marriage is celebrated in the sacristy, or even in an obscure chapel of the church, but without any pomp, or sermon, or vestments, or candles, unless the Ordinary has granted a special permission.

Amongst the reasons which may influence the Ordinary to permit some solemnity, may be cited: the fear that the parties may not observe the conditions of the divine law, the fear that the Catholic party may lapse into heresy or schism, the fear of arousing hatred or animosity amongst heretics, etc.

87:—Custom has made in certain places a veritable prohibitive impediment of the *forbidden time*, an impediment recognized by the
(Note continued on page 69)

blessing. It extends from the first Sunday of Advent to the day of Christmas inclusively, and from Ash Wednesday to Easter Sunday inclusively (Can. 1108, §2).

And even during the closed time, the Ordinary can, for just reasons, permit the giving of the solemn blessing with the Mass *pro sponsis*, when the rubrics do not forbid it (cf. n.60). But in this case the contracting parties are to be warned to refrain from undue display and from all excessive celebration (Can. 1108, §2).

ARTICLE V

Concerning the Place for the Celebration of Marriage

63:—ORDINARILY the marriage of two Catholics must be celebrated in the parish church.

To celebrate it in any other church, or in a public oratory, the permission of the Ordinary or of the Pastor is required. (Can. 1109, No. 1).

64:—THE ORDINARY ALONE can grant permission to celebrate the marriage of two Catholics in a private house, and then only under extraordinary circumstances and for a just and reasonable motive, such as, for instance, the impossibility for one of the contracting parties to come to the church, the necessity of secretly revalidating the marriage, etc.

To obtain permission to celebrate the marriage in the chapel of a seminary or of a religious house,

Holy See. But the New Code rejects all impediments introduced by custom and not inserted in the official list. But the impediment of *forbidden time* is not found in the list of impediments.

it must be a case of urgent necessity; and even in such a case, the Ordinary is bound to prescribe the observance of all the proper precautions (Can. 1109, §2).

65:—MIXED MARRIAGES, unless the Ordinary rules otherwise, must be celebrated outside the church buildings. (Can. 1109, §3) (cf. No. 61).

ARTICLE VI

The Recording and the Notification of the Marriage

66:—An official proof of the celebration of the marriage must be left in the parish records. The Code indicates the means for doing this.

67:—THE RECORDING OF THE MARRIAGE.—As soon as possible after the celebration of the marriage, the Pastor, or the priest who takes his place, must record the marriage in a special Register, giving the names and surnames of the contracting parties and of the witnesses, the place and the date of the ceremony, and all other needed data, such as the dispensation from banns, dispensation on account of relationship, etc.

This is the duty of the Pastor, even if it was a delegated priest who blessed the marriage (Can. 1103, §1).

68:—Besides this, the Pastor must write down in the Baptismal Register, the fact that these parties contracted marriage on this day in this parish.

69:—NOTIFICATION OF THE MARRIAGE.—It may be

that one of the contracting parties, or both of them, may have been baptized in another parish.

In that case, the Pastor must send a notification of the marriage, either directly, or thru the Chancery Office, to the pastor of the parish where the married couple were baptized; and this pastor must record the marriage in the Baptismal Register there (Can. 1103, §2).

70:—The purpose of this ruling is to prevent the nullity of a second marriage because of the impediment of previous marriage bond. If, later on, one of the contracting parties asks for a certificate of baptism, mention of his marriage will be made in it, and this will compel him to furnish proof of the death of his former partner.

It is, consequently, a grave obligation, for the officiating priest to send the notification, and for the priest who receives it to record it. The Ordinary should insist on the exact fulfillment of this obligation; and he can punish neglect in this matter with canonical penalties.

It is not necessary, however, that the record in the Baptismal Register be made by the pastor himself; but the notification must bear the signature of the pastor and the seal of the parish.⁸⁸

72:—*Even in extraordinary cases* when the marriage has been celebrated without the presence of

88:—This notification must contain the names and surnames of the married couple, the name of the parish where they were baptized, the date of their baptism, the date and place of the marriage, and names and surnames of the witnesses.

the Pastor, he must be notified, and the records must be made in the Registers spoken of above; the priest who, by chance, has served as a witness, or when there was no priest present at all, the ordinary witnesses, are bound *in solidum* with the married couple, to do all that is needed to see that these records are made⁸⁹ (Can. 1103, §3).

89:—The Code treats, in a special chapter, of *marriages of conscience* (Can. 1104-1107). By this term we mean a marriage that is contracted before a qualified priest and two witnesses, but secretly and without the publication of the banns.

It presupposes a special permission from the Bishop himself, or from his Vicar General fortified with a special mandate, and a very grave cause, such as the impossibility of regularizing before the civil law the situation of the one of the parties who is married civilly. It is not to be recorded in the ordinary Marriage Register, but in a secret Register, kept in the Chancery Office.

The permission of the Ordinary entails the promise and the grave obligation of keeping the secret on the part of the officiating priest, the witnesses, the Ordinary and his successors, and even on the part of the married pair themselves if one of them is unwilling that the marriage should be known.

Nevertheless the Ordinary would cease to be bound to keep the secret if this union became a public scandal, or if one of the married pair attempted to contract another marriage. The same would hold good if the married pair did not have their children baptized, or if, after having them baptized under fictitious names, they failed to notify the Ordinary within thirty days, or, finally, if they neglected the religious education of the children.

Part Second

Impediments and Dispensations

Chapter One

Impediments

73:—Impediments are obstacles to the conclusion of the marriage contract. They may spring from the natural law, from the divine law, or from the ecclesiastical law.

74:—They are either *prohibitive* or *diriment*, according as they merely impose a grave prohibition against the contracting of the marriage, or prevent the very validity of the contract (Can. 1036). Ignorance of a diriment impediment does not prevent it from producing its effects.

75:—Impediments may be either *public* or *occult*. They are public when they can be proven in court, either because they are based on a fact that is known to a certain number of people or is so notorious that it cannot be doubted, or because the fact is attested by a public document or by qualified witnesses (v.g., the witnesses of a marriage). They are occult if they cannot be proven and are

90:—Amongst the impediments that may be occult, the chief are these: private vows, consanguinity resulting from relations outside of marriage, and crime.

So long as the married pair and the confessor are the only ones who know of the impediment, it is truly occult. But even when the impediment is known to certain persons whose discretion is morally assured, recourse may be had to the Penitentiary to secure the dispensation. Nevertheless, it would be better in this case to ask this tribunal for a dispensation for the non-sacramental internal forum.

subject only to the judgment of God⁹⁰ (Can. 1037).

The former are the object of a dispensation for the *forum externum*, the latter of a dispensation for the *forum internum*⁹¹ (cf. n.155).

76:—Only the Pope has the right to decide in what cases the divine law renders a marriage null or illicit.

Only the Pope can establish, by general or particular laws, diriment or prohibitive impediments in the case of marriages between baptized persons (Can. 1038). These laws effect even baptized non-Catholics, except when the lawmaker stipulates otherwise, as for example in the matter of the impediment of clandestinity. The civil law can establish impediments concerning the marriage of infidels.

77:—It follows from this canon that Bishops have no power to set up an impediment properly so called, that is, a new law adding to the number of universal impediments a new obstacle that will be official and permanent.

Nevertheless the Code accords them the right, for an accidental⁹² reason, and so long as that reason persists, to forbid for a time the marriage of

91:—When it is a question of revalidating a marriage that has lasted for ten years and which the public regards as valid, we may class amongst the impediments of the internal forum certain impediments which, by their nature, are public, but which, *de facto*, are occult, such as spiritual relationship or consanguinity.

92:—For instance, the fear of an impediment, the opposition of parents to the marriage of their minor children, etc.

their subjects, even outside their diocese. But this is a quite special *prohibition* called for by solicitude for the correct administration of the sacrament of marriage, and which may be sanctioned by a canonical penalty; but it is not an impediment. The Holy See alone can forbid a marriage under pain of nullity⁹³ (Can. 1039).

78:—In like manner, the Code does not grant to *custom* the power to introduce a new impediment, either prohibitive or diriment, nor to abrogate those which are established by the law (Can. 1041).

The only impediments in force in the Church henceforth are those expressly mentioned in the Code. We shall now consider them one after another.

ARTICLE I

The Prohibitive (Impedient) Impediments

79:—The code recognizes only three of these; the two old ones, namely Simple Vows and Mixed Religion; and one new one, Legal Relationship.⁹⁴

93:—The Pastor may also interdict a marriage, but without any penal sanction and on condition that he refer the matter at once to the Ordinary.

94:—Suppressed, therefore, are the various impediments mentioned formerly by canonists, and which are the result of betrothals, of the forbidden time, or the absence of the consent of the parents.

Nevertheless, in a larger sense, we may still count amongst the prohibitive impediments, the omission of the publication of the banns, the absence of the conditions required for the licit contracting of marriage (*ratione commorationis*), or a special prohibition issued by competent authority.

1:—Simple Vows

80:—Any vow which, by its nature, is contrary to the ends of marriage, constitutes a prohibitive impediment.

The Code enumerates five of these: the vow of virginity, the vow of perfect chastity, the vow not to marry (of celibacy), the vow to receive sacred orders, the vow to enter religion (that is, in an institute in which the members take *public* vows).

Each of these vows has a special object; but all of them contain, at least implicitly, the promise not to marry. To fail to fulfill this promise is a grave sin; nevertheless the marriage is valid.

81:—The Holy See can even rule that simple vows shall constitute a diriment impediment (Can. 1058, §2). This is the case of the simple vow of chastity taken in the Society of Jesus; but that is probably the only instance of the kind.

82:—There are some of these simple vows from which the Bishop can dispense;⁹⁵ for others, the dispensation is reserved to the Holy See.

The Ordinary can dispense from the vow of virginity, from the vow of celibacy, from the vow to receive sacred orders, from the vow to enter a religious congregation (except when there is a special clause of reservation in the approbation of the constitutions), from the vow of temporary

95:—The Bishop can dispense not only his own diocesans but also travellers (*peregrini*) (Can. 1313, §1).

chastity, or even from the vow of perpetual but imperfect chastity.

The following vows are reserved to the Holy See: perpetual vows taken in a religious congregation,⁹⁶ the vow to enter a religious order with solemn vows, the vow of perpetual perfect chastity.⁹⁷

2:—*Legal Relationship*

83:—This relationship arises from adoption. In countries where legal relationship makes marriage illicit, Canon Law also makes this relationship a prohibitive impediments (Can. 1059).

Reference must be had, therefore, to the civil legislation of each individual country. In the United States, as in Austria, England, and Holland, there is no impediment from adoption.^{98 99}

3:—*Mixed Religion*

85:—This is the impediment which affects marriages of Catholics with baptized non-Catholics.

96:—Remark, however, that a member of a Congregation *de jure diocesano*, can obtain from his Bishop an indult of secularization which frees him from all his vows, with the exception of the obligations attached to a major sacred order (Can. 640, No. 1, n. 2).

97:—Nevertheless these two latter vows are reserved only if they were made absolutely and after the lapse of eighteen years (Can. 1309).

98:—It is considered a merely prohibitive impediment in France, Germany, Hungary, Switzerland, Belgium. In Italy and Spain, as in certain parts of South America, adoption constitutes a diriment impediment. In Austria, England, Holland, and the United States, there is no impediment of adoption.

99:—When the impediment of legal relationship exists, very often there is also an impediment of illegitimate consanguinity.

86:—THE LAW.—The Church strictly forbids in all countries these mixed marriages, that is marriages between Catholics and baptized non-Catholics who belong to a heretical or schismatical sect.¹⁰⁰

And if this union were to entail for the Catholic party and for the children, the danger of perversion, the divine law also would forbid the marriage (Can. 1060).

In this latter case the Church *would have no power to grant a dispensation*. This explains the severity of the precautions taken by the Church to prevent this danger of perversion.

87:—THE COURSE TO PURSUE.¹⁰¹—Ordinaries and Pastors must do their best to dissuade the faithful from these mixed marriages by calling their attention to the numerous and serious disastrous consequences.¹⁰²

If they cannot prevent them, they must see that the divine and the ecclesiastical law are respected. And once the marriage is contracted, they

100:—The formal denial of the divine truths taught by the Church is not sufficient to produce this impediment, if the denier does not belong to any sect. On the other hand, it is not necessary, in order to fall under the law, to have been baptized in a non-Catholic sect; *one is no longer a Catholic* in the sense given to the word by the Code, if, after having been baptized in the Roman Church, he gives formal adhesion to a heretical or schismatical sect.

101:—When the baptism of the heterodox party is doubtful, (and this is the case in these days in a great number of Protestant sects), we should ask *ad cautelam* a dispensation from disparity of worship at the same time as the dispensation from mixed religion.

102:—For instance, the danger of perversion, the bad education received by the children, the scandal that may result from the union,
(Note continued on page 80)

must see that the married couple faithfully fulfill the promises that they have made (Can. 1064).

Even when the marriage was a purely civil marriage, or was contracted before a non-Catholic minister, it is the duty of the Pastor to bring back the erring ones and to insure the religious education of the children.

88:—DISPENSATIONS.—This impediment is simply prohibitive. Nevertheless the Church gives a dispensation¹⁰³ from it very reluctantly, and only for grave and genuine reasons, for example the impossibility of dissuading the Catholic party from the marriage, the small number of Catholics in the country, the fear of rousing public opinion against Catholics, the fear of a civil marriage or of a marriage before a non-Catholic minister, the hope of the conversion of the heretic,¹⁰⁴ etc.

If the contracting parties have neglected to ask for a dispensation from this impediment, or have not been granted it, the Pastor must refuse to assist at their marriage. And in cases of this

the danger of falling into indifference regarding the practice of religion, the many causes for dissension between the married pair.—The seriousness of this danger depends upon personal and local circumstances; in China, for instance, the marriage of a Catholic with a non-Catholic woman *ordinarily* disposes the woman to conversion.

103:—Catholics who dare to contract a mixed marriage without a dispensation are by that very fact excluded from all the acts which are under the control of the ecclesiastical authorities. (Can. 2375).

By this we mean the administration of the properties of the Church, the functions of sponsors at Baptism and Confirmation, of judge or advocate or proxy in ecclesiastical cases, the right of patronage, etc.

sort, even when it is an urgent case, the Ordinary cannot authorize such assistance, except, perhaps, in certain countries (Germany, Austria, Hungary) where the Holy See formerly granted this power to the Bishops.

89:—SPECIAL CONDITIONS.—In order to insure respect for the divine law, the Church demands that the non-Catholic party shall promise to remove all danger of the perversion of the Catholic party, and to permit the Catholic party the free exercise of his or her religion; and *both* of the contracting parties must promise to have *all* their children baptized and brought up in the Catholic faith.¹⁰⁵

A mere perfunctory promise will not suffice; there must be a moral certainty that the promises will be kept; and the rescripts of the Holy Office demands that the Ordinary, before granting the dispensation, shall have that certainty. Regularly, the Pastor must exact these promises in writing¹⁰⁶ (Canon 1061). Certain *statutes* even go so far as to require that these promises be given under oath;

104:—All the customary motives may be alleged, provided that they refer to the Catholic party (cf. n. 14, note 2).

105:—These promises are the essential pledges destined to safeguard the natural and the divine law. Regularly, they must be required even at the point of death (cf., however, n. 92).

106:—In a particular case, therefore, the Ordinary may dispense from the necessity of having these promises made in writing. But, unless by special permission from the Holy See, he cannot authorize the marriage if the non-Catholic party refuses to make the promises.

The Pastor who secures the promises of the contracting parties must make sure of their sincerity; if there is any serious reason for doubting that these promises will be kept, the Ordinary must not fulminate the dispensation.

and the Ordinary certainly has the right to prescribe these special precautions.

In addition, the Catholic party *must know* that it is his duty to endeavor, prudently, to bring about the conversion of his partner (Can. 1062).

90:—In spite of the fact that they have been accorded a dispensation, the contracting parties are not permitted, either before or after their marriage, to appear, either in person or by proxy, before a non-Catholic minister acting as such, and to give or renew before him their matrimonial consent (Can. 1063, §1), even tho the Catholic party were to remain perfectly passive and not participate in any religious rite.

In such an act there would be participation in heretical or schismatical worship, formally forbidden by the Church, and the Catholic party would thereby incur an excommunication reserved to the Ordinary, and would be "suspect of heresy"¹⁰⁷ (Can. 2319, §1, n.1).

If the Pastor knew that the contracting parties had already violated this injunction, or were planning to violate it, he would have to refuse to assist at the marriage, or to ask authorization to do so from the Ordinary, who could give such authoriza-

107:—The rescripts emanating from the Holy Office demand that the contracting parties shall be reminded of their obligations and of the penalties which they would incur if they violated them, "even if, because of this admonition, the Catholic party were liable to sin *formally*" (Holy Office, Jan. 3, 1871).

As a general rule, the Pastor "must remind his parishioners of the *grave sin* they would commit if they were to present themselves before a heterodox minister" (Holy Office, Dec. 12, 1888).

tion only for very serious reasons, and after taking all possible precautions to avoid any scandal (Can. 1063, §2).

The recourse to the Ordinary is strictly compulsory; he is the only competent judge of the exceptionally grave nature of the inconveniences which a refusal would entail.

91:—However, in countries where the non-Catholic minister occupies the post of a civil officer, and where marriages are recognized by the state only when they are recorded by him, the contracting parties may present themselves before the non-Catholic minister, provided that they regard him only as a civil functionary, and have merely the intention of satisfying the law with regard to the civil effects of marriage (Can. 1063, §3).

We have already seen that for such unions there are ordinarily no publications of banns, and that the marriage must not be given any solemnity (nos. 24, 47, 61, 65).

92:—When it is a question of regularizing a purely civil mixed marriage, the first thing to be done is to secure the regular promises, and reparation of the scandal given by the Catholic party. If the contracting parties have appeared before a non-Catholic minister, the Catholic party must receive absolution from the excommunication reserved to the Ordinary which he has incurred, and must accomplish the penance which is imposed upon him, and prepare in this way to regain the friendship of God (S. Office, Sept. 16, 1922).

But there may be cases in which the Catholic party is well disposed and is anxious to regularize the situation, but the non-Catholic party will not make the required promises. There is a chance in such a case, especially if there are children, that the Holy See will grant a dispensation, merely imposing upon the Catholic party the obligation of doing everything possible to bring up the children in the Catholic faith.—In order to regularize such a marriage, a dispensation *in radice* must be secured.

4:—*Marriage with Unworthy Catholics*

93:—The dangers encountered in mixed marriages may also be met in certain marriages between Catholics, when one of the parties, even tho not belonging to a heretical or schismatical sect, has *notoriously* abandoned the Christian faith, or is notoriously affiliated with an organization condemned by the Church.¹⁰⁸ Is there not, in such a case, a danger of perversion for the faithful party and for the children?

The code insists that Pastors shall endeavor to dissuade Catholics from making such marriages (Can. 1065, §1).

108:—The mere fact he has not for a long time practiced his religion, does not of itself prove that he has abandoned his faith. The apostasy must be notoriously manifested by frequent attacks made against the Church, by ridicule of her dogmas, insults to the hierarchy, etc.

Apostates incur an excommunication reserved specially to the Holy See (Can. 2314); those who join the Freemasons or other organizations hostile to the Church or to the civil power, are under an excommunication reserved *simpliciter* to the Holy See (Can. 2355).

94:—If the parties insist on being married, recourse must be had to the Ordinary. A careful examination will enable him to decide whether or not there is moral certainty that the children will be brought up in the Catholic religion, and whether or not there is danger of perversion for the faithful party. If the circumstances justify it, he will give permission to the Pastor to assist at the marriage (Can. 1065, §2) after having, if necessary, demanded from the contracting parties the same promises as are required in mixed marriages.

95:—If a *public* sinner or a notoriously excommunicated person refuses to go to confession or to be reconciled to the Church before being married, the Pastor should not assist at his marriage unless for a very serious reason. When time permits, in this case also the judgment of the Ordinary is to be obtained.¹⁰⁹

In order that permission to assist at the marriage be granted, it is enough, even in the absence of any serious reason, if the sinner or the excommunicated person presents himself in the confessional, even tho he does not receive absolution.

ARTICLE II

Diriment Impediments

96:—So far as their generic terminology is concerned, the Code has preserved all the former im-

109:—In cases of this kind, the ceremony of marriage must be performed as in the case of mixed marriages. The Bishop can, however, if he sees fit, permit the celebration of Mass and the other religious ceremonies.

pediments. In the case of some, however, it has modified their definition (e.g., for affinity); in other instances, it has, under the old classification added or suppressed certain impediments (v.g., *publica honestas*).

97:—The diriment impediments are, according to their importance, divided into two classes: those of major degree and those of minor degree.

The impediments of *minor* degree are five in number: consanguinity in the 3d collateral degree, affinity in the 2d collateral degree, *publica honestas* in the 2d degree, spiritual relationship, the crime of adultery accompanied by the promise of marriage or by a purely civil marriage ceremony (Can. 1042).

This distinction is of importance only for the dispensations of impediments.

98:—We shall now, following the Code, examine the official list of impediments. It will suffice to give the most practical points concerning each of them.

1:—*Age*

99:—The marriage is null if the man has not completed his sixteenth year and the woman her fourteenth year.¹¹⁰

110:—In order validly to contract marriage, a young man who was born on the 1st of January, 1920, must wait till the 2d of January, 1936 (Can. 34, No. 3, n. 3).

The civil law in the United States varies in the different states.

Under the former legislation, the marriage might be contracted two years earlier in each case.

The Code also insists that the Pastors shall dissuade the faithful from marriages which, altho valid, would not be in conformity with the usages of the country (Can. 1067). In this country, girls rarely marry before the age of eighteen, and boys are usually a few years older.

100:—The Church, which has thus fixed the legal age for marriage, has the power to grant a dispensation from this impediment, provided that the natural law which demands of the contracting parties a sufficient understanding of the obligations of marriage is safeguarded. But the law does not any longer admit that *malitia supplere potest aetatem*.

In the case where a marriage has been contracted without a dispensation before the legal age, it would not be made valid by the mere fact of the contracting parties' reaching the legal age. To re-validate the marriage, it is necessary that the contracting parties renew their consent, following the usual regulations.

2:—*Impotency*

101:—By impotency we mean the physical, natural or accidental, incapacity of consummating conjugal relations.¹¹¹

111:—We must admit that "*valide matrimonium contrahunt quot-quot capaces sunt copulae per se aptae ad generationem*." But the authorities do not agree on the exact nature of the conditions required that "*copula per se apta sit ad generationem*."

Most authorities accept this definition: "*commixtio carnalis fit per* (Note continued on page 88)

It is *perpetual* when it cannot be remedied by natural means, or without danger of death; in the contrary hypothesis, it is called temporary.¹¹²

It is *absolute* or *relative* according as it renders impossible relations with all persons or merely with a certain person.

102:—*De jure naturali*, impotency which is *antecedent* to the marriage and is *perpetual*, either on the part of the man or on the part of the woman, whether it is known or not, whether it is absolute or relative, makes the marriage null.

In case of doubt, either regarding the extent of the law or regarding a particular fact, the marriage is not to be impugned.

Likewise care must be taken not to confuse impotency with sterility, which is not an impediment, either diriment or prohibitive¹¹³ (Can. 1068).

vasis feminei penetrationem et seminis in id effusionem." This is the opinion of Ferreres, *de Vasectomy duplici*, ed. alt., 1913. However, Father Vermeersch, *de Castitate*, n. 573, holds that *de jure naturae non certo requiritur effusio veri seminis.*" Father Antonelli, *Medicina Pastoralis*, t. 2, n. 537, considers as impotent "*virum vel mulierem quem physicus organorum defectus incapacem generandi facit v.g., mulierem cui desunt ovaria.*" Others, while admitting the common definition of impotency (*impotentia coeundi*), hold that the absence of the "*potentia generandi*" does not permit the giving of a valid consent "*quia finis operis excluditur.*"

112:—In order to remove this impediment, the contracting parties are bound to undergo certain delicate operations which may be the cause of great suffering, v.g., *instrumento patefieri potest virginale claustrum, per incisionem mulier idonea fieri potest ad carnale commercium.* . . . This is the theory; in practice generally recourse is had to a dispensation *super rato*.

113:—There are many instances in which it is difficult to distinguish sterility from impotency. From the definition given above we may draw the following conclusions: I:—*Certo impotentes sunt viri qui semen non habent, qui nempe utroque testiculo carent, vel qui defectu erectibilitatis laborant; sed senes, qua tales, non sunt impo-*
(Note continued on page 89)

103:—There can be no dispensation, properly speaking, from this impediment, but it very often gives occasion for the dispensation *super rato et non consummato*.

N. B.:—This is the solution to adopt when the impediment is doubtful, the non-consummation certain, and the faithful are anxious to be delivered from this false situation.

3:—*The Bond of Previous Marriage*

104:—So long as the bond of a previous marriage, even tho not consummated, persists, the contracting parties cannot validly conclude a second marriage.

This impediment is based on the unity and the indissolubility of marriage, which are *de jure divino*.

105:—There is only one case, the “case of the Apostle” (*privilegium Paulinum*), in which a consummated marriage may be dissolved in favor of an infidel who has been converted (Cf. n.231).

tentes censendi. Mulieres sunt impotentes ex defectu vaginae, nimiae arctitudinis seu vaginisimi, etc. 2.—Probabilius (vel etiam certo) manet impotentia quando penetratio penis in vaginam est impossibilis et fecundatio fieri solum potest per appositionem seminis ori vaginae, vel ope fecundationis artificialis quae coeterum prohibetur. 3:—Non est certo impotens mulier castrata cui utrumque ovarium ablatum est, etiamsi de perfecta excisione constiterit.

This third clause is not admitted by all the authorities. It follows from the definition given above, from two responses from the Holy Office, and especially from a response of the Congregation of the Sacraments (April 2, 1909), which permitted the marriage of a woman of whom a surgeon testified that “*certo perfecta ac completa erat ovariorum exsectio.*” Hence in all cases marriage, and the use of marriage can be authorized provided that there is “*potentia coeundi.*”

106:—So long as it is not consummated, a marriage may be dissolved by the religious solemn profession of one of the married couple, or by a special dispensation obtained from the Soverign Pontiff.

107:—But even in cases where the first marriage was null, or was dissolved for any reason, it is not permitted to proceed to a second marriage except upon *lawful and certain* proof of the nullity or dissolution of the first marriage (Can. 1069).

What is required to make the proof lawful and certain? Evidently, we must consider as lawful and certain proof certain authentic documents, such as a certificate in regular form of a Pontifical dispensation *super rato* . . . , a copy of the sentence of the ecclesiastical judge declaring nullity,¹¹⁴ a funeral certificate given by the Pastor who officiated at the funeral, etc. But proof is not always so easy as this.¹¹⁵

108:—As a general rule, there must be *moral certainty* of the death of the first partner. Metaphysical certainty is not demanded; but on the other hand simple probability, which permits the persistence of serious doubt, is not sufficient.

114:—In the case of a first marriage contracted in heresy or infidelity, it would not be necessary to pay any attention to a sentence handed down by the civil court; if the divorce was given for a canonical reason, the trial should be begun all over again before the ecclesiastical tribunal.

115:—During the war, soldiers disappeared by thousands without leaving any trace behind them. Most of them are dead; but it may well be that doubts may exist concerning the disappearance of some of them, deserters, prisoners who stayed in Germany, etc.

109:—To obtain this certainty, we must follow the rules given by the Holy Office, in its Instruction of May 14, 1868:

1:—Silence, and even prolonged absence, are not sufficient proofs of death.

2:—We must secure, as soon as possible, an authentic proof of the death, such as, for instance: a certificate taken from the records of the parish or of a hospital, a certificate of the military authorities, or, if none other is to be had, a certificate given the civil authorities of the place where the death took place.

3:—If this document cannot be secured, two reputable witnesses are to be examined under oath; they must have known the deceased, and their testimony must agree concerning the place and circumstances of his death.¹¹⁶

4:—In certain cases, the testimony of one witness who is above suspicion may suffice, provided that the testimony contains nothing improbable.

5:—In other cases, the testimony of secondary witnesses may be accepted, that is, the testimony of persons who are worthy of belief and who have heard eye-witnesses tell of the death.¹¹⁷

6:—If none of the above-mentioned proofs can be obtained, we may collate all the conjectures,

116:—After they have taken the oath, the following questions are to be put to them: Did you know the dead person? At what time and in what place did he die? What was the cause of his death? Where was the body buried? Are there any other people who know of this? etc.

117:—Who told you about this? How long has this been known? What reliance do you place in the story? Why did these people say these things? What interest did they have in saying them? etc.

presumptions, and other data which may aid us to obtain sufficient moral certainty of the death.

A searching inquiry must be made concerning the qualities of the supposed deceased, his age, his physical constitution, his state of health, the reasons for his departure, the length of time during which he was absent, his sentiments towards his family and towards the Church, the frequency and the contents of his letters, his manner of living, the various places where he resided, his last place of abode, etc. To secure all this information recourse may be had to the civil officers, to the newspapers, etc.

110:—When there is no authentic proof of the death, and when it is necessary to resort to an inquiry of this kind, the affair must be placed in the hands of the Ordinary, who will proceed to a summary canonical inquiry.¹¹⁸ In the more serious cases, when doubt still persists, the Ordinary himself must have recourse to the Holy See.¹¹⁹

118:—The presence of the Defender of the Marriage Bond, tho oftentimes of great service, is not required by the law.

The Court must require a certificate of the first marriage, a certificate of the second marriage (if there was a second marriage), and the documents establishing the alleged death of the absent spouse. The examination of these documents will enable the court to determine whether the second marriage took place before or after the solution of the first, and in this manner to determine its validity or nullity.

If the judge arrives at full certainty in the matter, he delivers a certificate of free status, or declares the second marriage null. If doubts persist, if the marriage has already been contracted it is not declared null, but if it is not yet contracted, it cannot be permitted.

It is needless to add that even after an authorization granted for the second marriage, if the first spouse reappears, the second marriage will be null and the two parties must separate.

119:—In this connection, we may quote the instruction of the Holy
(*Note continued on page 93*)

4:—*Disparity of Worship*

111:—This impediment forbids, under pain of nullity, the marriage of a person who was *baptized in the Catholic faith or was converted to it from heresy or schism*, with a non-baptized person (Can. 1070, §1). Amongst these “converts” must be classed the children who were baptized in schism or heresy, but who have been brought up in the Catholic faith from the time they reached the age of reason.

112:—This Canon modifies the former legislation on one point; hitherto every marriage of a baptized person with a non-baptized person was null. Henceforth the Church recognizes as valid the marriages of heretics or schismatics with infidels, unless the baptized party was baptized in the Catholic religion.¹²⁰

Office of July 29, 1898, which allowed second marriages to widows of Italian soldiers who were positively known to have taken part in the battle of Adoua, and who were justly considered as dead, because of the circumstances.

Other cases of the same kind are found in the *Acta Ap. Sedis* of May, 1915, May, 1916, and March, 1917.

120:—Thus, the marriage of a Protestant and an infidel is valid if it was contracted after the 19th of May, 1918; if contracted before that date, it was null.

It seems only right to extend this privilege to children of non-Catholics, *who were baptized in the Catholic Church but brought up outside the Church*, when they contract marriage with non-Catholics (Can. 1099). For without this privilege, the general dispensation which is granted to them in the Code, would not obtain the effect designed by the legislator (n.54).

Not all authorities agree on this point. In any case, the impediment is doubtful for this category, and therefore the marriage is to be considered valid (Can. 1014). The question is of practical interest only in cases where these parties return to the Catholic Church after their marriage.

113:—DOUBTFUL BAPTISM.—The difficulties in the matter of this impediment come from the doubts which sometimes remain at the time of the marriage, or arise after the celebration of the marriage, with regard to the valid reception of baptism.

Before the marriage, there must be moral certainty that baptism was received, or else baptism must be repeated conditionally, or a dispensation from the impediment of disparity of worship¹²¹ must be asked for *ad cautelam*.

After the marriage, the doubt is to be ignored and the marriage considered as valid, but only so long as the doubt persists.

The marriage is null if proof is given that in reality baptism was never received by one of the partners¹²² (Can. 1070, §2).

114:—DISPENSATION.—Dispensations from this impediment are secured more easily in pagan countries, with more difficulty in Catholic countries, and with especial difficulty when the infidel party is a Mussulman.¹²³

121:—In this case the Ordinary can grant the dispensation (Can. 115).

122:—If the doubt regarding the baptism existed before the marriage and if the parties received the sacrament without settling the doubt, the marriage is to be held as valid (for instance, the marriage of a Catholic woman with a heretic whose baptism was doubtful).

The marriage is valid even when it is proven that one of the parties is not baptized and the other was baptized in a non-Catholic sect and never belonged to the Catholic Church.

123:—In cases of nullity based on disparity of worship, the whole procedure consists in securing and examining the proofs that will establish beyond doubt that Baptism was never received or that it was invalid.

115:—All the prescriptions concerning mixed marriages¹²⁴ apply with still more force to these marriages and these dispensations (Can. 1071), (Cf. nos. 87-92). There must be really serious reasons to secure this dispensation.

5:—*Sacred Orders.*

116:—The voluntary and valid reception of sacred orders (v.g., subdeaconship in the Western Church), constitutes a diriment impediment¹²⁵ (Can. 1072).

The Church has the power to grant dispensations from this impediment; but it is only rarely that she does so.¹²⁶

It would seem that only motives of public order can be alleged to secure a dispensation from the impediment of priestly orders. For deaconship and subdeaconship, reasons of a private nature may suffice.

124:—It cannot be maintained that a dispensation of mixed religion contains implicitly a dispensation from the impediment of disparity of worship.

Therefore, if, after having secured a dispensation from the impediment of mixed religion, it transpires that the party who was regarded as a heretic was never baptized, the marriage is null. (Wernz, 508, note 33).

125:—A cleric who contracts marriage without a dispensation, even though the marriage may be a purely civil marriage, incurs an excommunication reserved to the Holy See, and is to be punished with degradation (Can. 2388).

In the Oriental Catholic Church a cleric can ordinarily receive the major orders after having contracted marriage; but after having received subdeaconship, or deaconship, or even priesthood, according to the various rites, he no longer has the right to marry.

126:—*De facto haec dispensatio Episcopis nunquam conceditur, presbyteris nonnisi rarissime et magna cum difficultate; diaconis et subdiaconis, etsi non facile et frequenter, tamen minore cum rigore quam ex antiqua disciplina* (Wernz, 396).

6:—*Solemn Vows*

117:—Solemn vows, that is, vows taken in those religious orders of men or women in which the *solemnity* of the vows is admitted and accepted by the Church, constitute a diriment impediment.

This invalidating canonical character may even be attached to simple vows by the supreme authority of the Sovereign Pontiff.¹²⁷

The Church grants dispensations from this impediment for grave reasons.¹²⁸

7:—*Abduction*

118:—There is abduction, and consequently a diriment impediment, so long as the woman¹²⁹ who has been carried away *against her will*, either by trickery or violence, for the purpose of forcing her into a marriage,¹³⁰ remains in the power of her abductor (Can. 1074, §2).

127:—This is the tenor of a decree of Gregory XIII regarding simple vows taken in the Company of Jesus after a noviciate of two years (May 25, 1584).

These vows, however, have not the effect of rendering null a marriage "*non consummatum*."

128:—Since the Revolution, there have been in France and Belgium (except in the Comté of Nice and in Savoie) no nuns with solemn vows. At present the Holy See authorizes religious women in these countries to ask for permission to take solemn vows (A.A.S., 1923, p.358).

When the Holy See grants a dispensation from the impediment of Solemn Vows, it is solely for the purpose of effecting the validity and the lawful use of marriage. But the religious thus favored is not absolutely freed from the obligations of this vow; outside of marriage any sin against chastity is equally a sin against his vow. Moreover the permission to contract marriage is given only once.

These restrictions are no longer included in the dispensation from the perpetual simple vow of chastity.

129:—There is no impediment if it is the man who is abducted by the woman.

130:—When the victim of abduction has contracted marriage while under the control of her abductor, it is always presumed in the external forum that she was abducted "*matrimonii causa*."

The Code does not even require that there shall have been an abduction properly so called; the sequestration *in loco*, the *compulsory* seclusion of a woman in her own home or in a place to which she had free access, is a form of violence which is equivalent to abduction (Can. 1074, §3).

119:—There is no impediment if the woman consents to her abduction, or goes of her own free will; but we must not too readily believe in her consent so long as she remains in the power of the abductor. Moreover this consent would not remove the impediment if the woman were a minor and were taken away in spite of her parents.

There would be, in addition, the abduction of seduction (and the marriage would be valid) if the woman, at first opposed to the idea of abduction, afterwards yielded to the pleadings of the man and went away with him. But the freedom of her consent must be unquestionably established; for the preliminary refusal establishes a presumption of violence, and the moral pressure of persuasion may be equivalent to a moral violence which would entail the persistence of abduction with all its juridical consequences.

There is no room for doubt that the impediment persists if, *during the course of her imprisonment*, the woman changes her mind and consents to the marriage; this indicates that, unlike the impediment of fear, abduction can render null a marriage that is freely consented to.¹³¹

131:—It is in a case of this kind that the Church can grant a dispensation.
(Note continued on page 98)

120:—But the impediment ceases of itself, as soon as the woman is no longer in the power of her abductor and is in a secure place where she can freely give her consent (Can. 1074, §2).

After a marriage that was invalid because of abduction, if the parties desire to continue to live together, the woman must first of all withdraw to a secure place; and it is only after she has done this that they can be permitted to renew their consent *in facie Ecclesiae*.

8:—*Crime*

121:—This impediment¹³² is divided into three classes:

1:—Adultery accompanied by a mutual promise¹³³ of marriage or by a purely civil marriage (Can. 1075, n.1).

In order that the impediment be present, it is required that the adultery should be *consummated* and *formal*, that is, that the two guilty persons should know they are not committing simple fornication; it is required also that the mutual promise of marriage—which must be serious and manifested externally—should have been made before

dispensation from the impediment of abduction. But, in order to insure the liberty of the marriage, she demands that the woman be first set free, and then the dispensation becomes available.

132:—This impediment is contracted even by those who do not know of its existence, for its character is not merely penal.

133:—Adultery alone, or the promise alone, is not an impediment. But the form under which the promise was made makes little difference, provided that it was made and accepted; and it makes little difference whether the promise preceded or followed the adultery. It is not required that the guilty couple should have planned in any way the death of the innocent spouse.

the dissolution of the bond resulting from the former marriage.¹³⁴

The civil contract is considered as *an attempt at marriage*. Therefore if, after having obtained a civil divorce, a person contracts a second marriage during the life of her former husband, when the latter dies, she must secure a dispensation in order to regularize this second marriage.¹³⁵

On the other hand, simple concubinage, without promise of marriage, does not constitute an impediment.

2:—Adultery combined with the murder of the lawful spouse by one of the two guilty persons (Can. 1075, §2).

The adultery must have been formal and consummated, and the murder must have been accomplished; but it is not required that there should have been any mutual conspiracy or any mutual promise of marriage.

There would not be any real conjugicide if the marriage, altho reputed to be valid, were really null.

134:—There is grave doubt as to whether this impediment exists, when the marriage follows after adulterous concubinage; or when shortly after the death of his wife, especially if she was sick for a long time, a man wishes to marry his servant or a person with whom he had already had frequent relations.

135:—When the Holy See grants a dispensation *super matrimonio rato et non consummato*, or when it gives permission to contract a new marriage in cases where we can presume the death of the first spouse, this dispensation, or this authorization, entails, if the case demands it, a dispensation from the impediment of adultery with the promise of marriage or of civil marriage. (Can. 1053). It is not so, however, when the authorization is accorded by the Ordinary.

3:—The murder¹³⁶ of the lawful spouse thru *physical* or *moral* complicity of the two criminals (Can. 1075, n.3).

Adultery is not required in this case, but there must be a real complicity in the crime; approval given after the commission of the murder does not create the impediment.¹³⁷

122:—The impediment of crime may be *multiple*, either in the same species, or by the union of several species in the same case.

Thus, for instance, if, after adultery, there come in succession the promise of marriage, the civil marriage ceremony, the murder of the lawful spouse by mutual complicity, there would be at least three impediments to the marriage of the guilty parties.

And if these various circumstances were verified twice because of the fact that both the accomplices were married, the impediments would be still more numerous.

136:—In this case, as in the preceding one, the murder must have committed *intuitu matrimonii*. In the external forum this intention is always presumed; but it is possible to prove the contrary.

137:—The impediment of crime, being simply of the ecclesiastical law, does not *directly* affect infidels. Thus, an infidel who killed his wife in order to marry another infidel does not incur this impediment, even if he is converted to Christianity before the marriage. The solution would be different, however, if he wished to marry a Christian woman whose husband he had killed with her consent; the Christian woman would be affected by the impediment, and the marriage with her accomplice would be null.—On the contrary, if the murder was exclusively the work of the infidel, there would be no impediment, even tho the Catholic party were guilty of adultery; this circumstance would not be enough to constitute an impediment.

123:—*Dispensation*. The first species is a minor impediment, and it is comparatively easy to secure a dispensation from it.

The last two species are major impediments; the Holy See does not dispense from them when the conjugicide is public, except at the point of death or in a case of urgency. For occult cases, the Penitentiary is less severe.

9:—*Consanguinity*

124:—Consanguinity is the natural bond, the community of blood, which unites persons descending from the same ancestor.

As this is the impediment which occurs most often, it is necessary to discuss it with some minuteness.

125:—DEFINITION.—The common *stock* or *stem* or *ancestor* is the person (father and mother, or only one of them) from whom the contracting parties derive their origin.

The *degree* is the measure of distance which separates the various descendants from the common ancestor.

The *line* is the series of persons who descend from the same common ancestor. It is *direct* when these persons descend from the same common ancestor one after another; for instance, grandfather, son, grandson. It is *collateral* when it is composed of a series of persons who descend from the same common ancestor but are not born of one another;

for instance, brothers, uncles, nephews, cousins, are related in the collateral line.

This collateral line is *equal* or *unequal* according as the persons are equally or unequally distant from the common ancestor.

126:—THE METHOD OF COMPUTING THE DEGREES OF RELATIONSHIP.—In Canon Law there are *three* rules to follow in computing degrees of relationship.

1:—*In the direct line*, there are as many degrees as there are generations; or as many degrees as there are persons, not counting the common ancestor.

2:—*In the equal collateral line*, there are as many degrees as there are generations on *either one of the lines*.

Thus, for instance, brother and sister are related in the first equal degree, first cousins in the second equal degree, etc.

3:—*In the unequal collateral line*, there are as many degrees as there are generations *in the longer line* (Can. 96).

Thus, uncle and niece are reputed as related in the second degree, and their immediate descendants are related in the third degree. In reality, for the sake of greater exactness, we may say that the uncle and niece are related from the first to the second degree, and their descendants are related from the second to the third degree; this is the form which should be employed when a dispensation is asked from this impediment.

127:—THE EXTENT OF THIS IMPEDIMENT.—The following are the rules of the New Code:

Consanguinity, *whether legitimate or illegitimate*,¹³⁹ whether it comes from both father and mother, or only from the father or the mother, prevents marriage:

1:—in the direct line, between all the ascendants and descendants indefinitely;

2:—in the collateral line, up to the third degree inclusively, that is, up to second cousins inclusively.

Consanguinity from the second to the fourth degree, or from the third to the fourth degree, is no longer an impediment; and even when it is found to exist side by side with another degree of consanguinity which does constitute an impediment, it is not necessary to mention it in the petition for a dispensation.

128:—MULTIPLICITY OF IMPEDIMENTS.—Consanguinity may be multiple, and consequently the impediment which results from it may also be multiple. Nevertheless the Code produces a notable simplification in the method of establishing this multiplicity of impediments.

129:—In the former legislation, the multiplicity of impediments resulted from:

1:—The diversity of common ancestors.

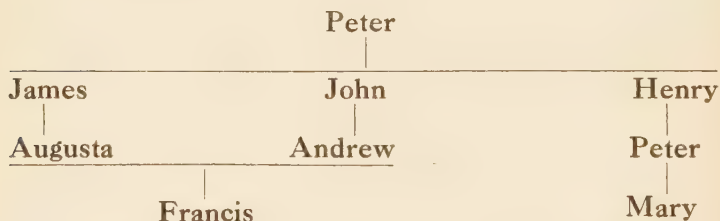
2:—The diversity of intermediary lines.

¹³⁹:—Consanguinity is a natural physiological fact. It makes absolutely no difference whether the community of blood results from legitimate marriage or from fornication.

There were as many impediments as there were lines leading to the same common ancestor, and the variation of one person was enough to create a line. As soon as, in the ascendance of one of the contracting parties, there was a marriage between relatives, there arose a new impediment.

130:—Henceforth this second cause of the multiplicity of canonical consanguinity no longer exists.

For instance: Two first cousins, Andrew and Augusta, are married. Their child, Francis, is related in the third degree to Mary, the daughter of a common first cousin.



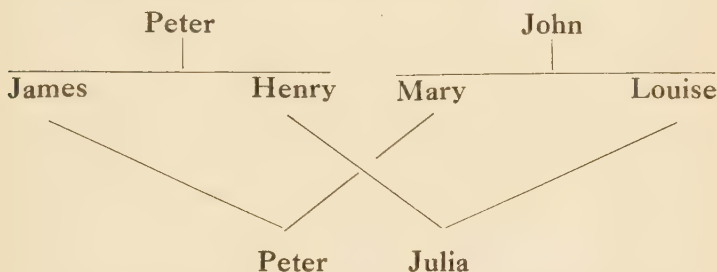
In the former legislation, the consanguinity in the third degree was twofold, because Francis descended from Peter on both his father's and his mother's side. Henceforth we are to calculate only one consanguinity in the third degree.

131:—According to the New Code, there are several consanguinities only in cases where the contracting parties have several common ancestors¹⁴⁰ (Can.. 1076, §2).

¹⁴⁰—The husband and the wife constitute only one common ancestor.

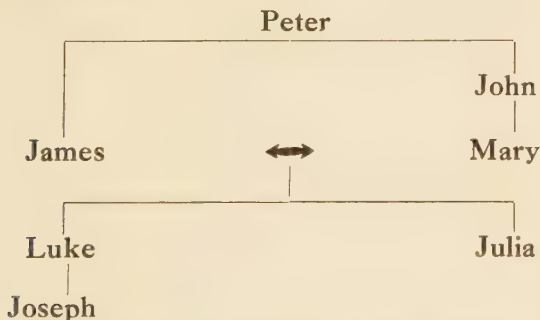
This multiplicity may result from *three* causes:

1:—In the ascendance of the contracting parties, there may have been marriages of persons who were related to each other, with other persons *who were also related to each other*.



Two brothers, James and Henry, marry two sisters, Mary and Louise. Their descendants are first cousins in two ways, because they have two common ancestors, Peter and John.¹⁴¹

2:—The *common* ascendants of the two contracting parties may have contracted marriage altho related.



141:—Another case of the same kind: the father and the son marry
(Note continued on page 106)

Julia wishes to marry her nephew Joseph; a first impediment, therefore, of consanguinity from the 1st to the 2d degree. But before this, Mary, the mother of Julia and the grandmother of Joseph, had married her uncle James; therefore, for Julia and Joseph, there exists a second impediment of consanguinity in the third equal degree.

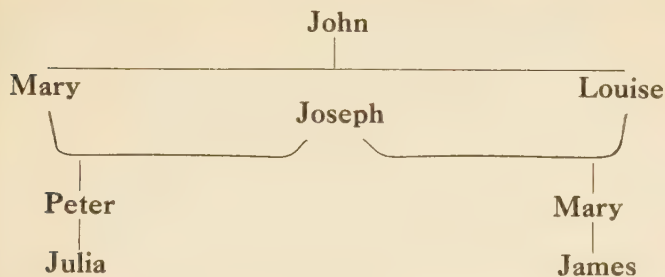
The two common ancestors are, Mary and James one side, and Peter on the other.

Note:—These two causes of multiplicity may be found in the same case. Let us suppose that in the first example given in paragraph 131, Peter and John, the common ancestors, were brothers. It would follow from this that the contracting parties, Peter and Julia, would have a third common ancestor, and therefore another impediment, that of consanguinity in the third equal degree.

In this case, the two brothers who married the two sisters had to secure a dispensation from the impediment of consanguinity in the second equal degree.

3:—The same person may have married successively two persons who were related to each other.

two sisters. Between their descendants there is an impediment of consanguinity from the 1st to the 2d degree, and another in the 2d equal degree.—This case is not merely a hypothetical case.



Joseph married successively two sisters, Mary and Louise. The respective descendants of these two sisters were doubly related, because they had two common ancestors, Joseph and John. Between Julia and James, therefore, there is consanguinity in the second equal degree on Joseph's side, and in the third equal degree on John's side.

132:—METHOD FOR DISCOVERING CONSANGUINITY.

When the common ancestor is known, write down the name of this common ancestor, put underneath it the name of his children, then in succession the names of the children of the first generation and of the following. If amongst these names those of the contracting parties are not found, there is no impediment between them. If their names are found, you have only to calculate the number of degrees.

When the common ancestor is not known, proceed in the opposite manner.

Write down separately the names of the contracting parties; put above each of them the names

of father and mother,¹⁴² and go on in this manner from generation to generation until you reach a common ancestor. If, in the third generation, no common ancestor has been found, stop, for there is no impediment.

133:—When an impediment has been found, we must see whether the consanguinity is multiple. This would require that there be a *second common ancestor*.

This is ascertained by inquiring of the contracting parties whether, in their ascendance, there are certain persons related to each other who have married persons who were also related to each other, whether common ascendants have contracted marriage altho related to each other, or whether one of their ascendants has married successively two persons who were related to each other.

But we must not forget that a simple marriage between relatives, discovered *in the ascendance of one of the contracting parties*, is not enough to cause a multiplicity of impediments.¹⁴³

134:—DISPENSATION. For consanguinity in the direct line, and for consanguinity in the collateral line in the first degree, there is no dispensation possible.¹⁴⁴ If there is a doubt as to whether the con-

142:—In order not to unnecessarily complicate the genealogical tree, the contracting parties should be asked whether it is thru their father or their mother that they are related; and then it is enough to write down the name of the common relatives.

143:—In cases where the petitioner has forgotten to mention in the petition a second impediment of the same or inferior degree, the dispensation remains valid (Can. 1052).

144:—The marriage of two infidels who are related in the 2d or the 3d degree in the collateral line (or even in the 2d joined with the
(Note continued on page 109)

tracting parties are affected by consanguinity of this sort, the Church absolutely forbids the celebration of the marriage (Can. 1076, §3).

For the other degrees of the collateral line, a reasonable cause will make possible a dispensation; the cause must be more or less grave according to the degree of consanguinity.

10:—*Affinity*

135:—The modifications made by the Code in this impediment are more important than those concerning consanguinity.

The term remains, but it must henceforth be taken in a completely different sense; we shall see very shortly the consequences of this new definition.

136:—FORMER DEFINITION.—In the former legislation affinity was an alliance arising from *carnal relations*, licit or illicit, of a man and a woman, and existing between one of these persons and the relatives of the other.

Hence there were two species of affinity, licit affinity and illicit affinity, according as it was de-

1st, like uncle and niece), is certainly valid, unless the civil law has made such relationship an impediment.

The marriage of two infidels who are related in the 1st degree in the direct line is certainly null.

The marriage of two infidels who are related in the first degree in the collateral line (brother and sister) is doubtful; if they are converted, the *motive of scandal* demands that they separate; but the Holy See (alone) can permit them to make a new marriage by granting a dispensation from the first if it has not been consummated after their baptism, or by declaring it null in *favorem fidei*.

145:—Therefore every marriage that is null either because of lack of consent, or because of some impediment, does not produce affinity. There does result from such a marriage, however, the impediment of *publica honestas* (n.145).

rived from marriage or from simple fornication.

137:—NEW DEFINITION. — Henceforth affinity comes solely from a valid marriage,¹⁴⁵ either consummated or simply contracted (Can. 97, §1).

It is, therefore, the alliance which is established between the husband and the blood relations of his wife, or between the wife and the blood relations of her husband¹⁴⁶ (Can. 97, §2).

The degrees of affinity are calculated like those of consanguinity, so that the relatives of one of the spouses in any degree becomes allied to the other in the same degree. The husband will be allied in the first degree in the collateral line with the sister of his wife, and allied in the second degree with the first cousin of his wife.

138:—It follows from this definition that there is no illicit affinity, that is, affinity resulting from fornication. The only affinity that there is, henceforth, is that which results from a marriage which is in conformity with all the regulations of the law.

On the other hand, there is affinity even when there has been no intercourse between husband and wife, and even after their separation, whether this separation is effected by death or by a dispensation from a non-consummated marriage.

146:—As a consequence of this, there cannot be an impediment of affinity between two contracting parties unless one of them is widowed.

Moreover, a widower is not related to the widow of the brother of his dead wife, nor to the widow of the son of his dead wife, etc.; nor are the blood relations of the husband related to the blood relations of the wife. Hence two brothers can without any dispensation marry two sisters.

139:—We have, therefore, the radical suppression of what was formerly a frequent cause of nullity in a marriage, a nullity that was only too often ignored or discovered too late.

At the same time we have abolished the most frequent cause of the “cases perplex” which arise when, just before the celebration of a marriage, discovery is made in confession of the impediment of illicit affinity.

140:—EXTENT OF THE IMPEDIMENT.—This impediment thus modified is much restricted in its extension.

In the direct line, it makes marriage always null in any degree. Marriage is therefore forbidden between a widowed person and all the ascendants or descendants of the deceased spouse.

In the collateral line, instead of extending, as formerly, to the 4th degree, it is restricted to the 1st and 2d degree. A widower cannot, therefore, marry either the sister, the aunt, the niece, or the first cousin of his dead wife; a widow cannot marry either the brother, the uncle, the nephew, or the first cousin of her dead husband.

The prohibition does not extend to more remote degrees.

141:—MULTIPLICITY OF IMPEDIMENTS.—

1:—The impediment of affinity is multiple¹⁴⁷ when the consanguinity from which it results is multiple (see n. 128).

147:—This question of the multiplicity of the same impediment is of less practical importance, since the Code has declared that a dispensation is valid even if it has been forgotten to mention a second impediment of the same degree or of inferior degree to that which was mentioned in the petition for the dispensation.

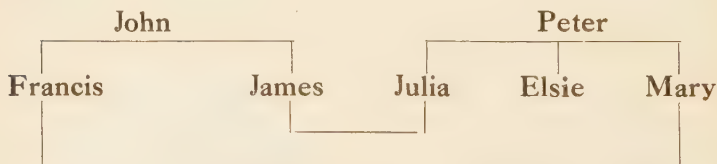
Peter wishes to marry Jane, who was first cousin by a two-fold relation to his first wife. There is between them a two-fold affinity in the second degree.

2:—This multiplicity likewise arises from successive marriages with relatives of the deceased spouse (Can. 1077, §2).

Peter marries as his third wife Jane, the sister of his first two wives; there is between them a two-fold affinity in the first degree.

If Jane were the sister of his first wife and the first cousin of his second wife, there would be between them an affinity in the first degree, and another affinity in the second degree in the collateral line.

Note.—In the New Code, when a widower marries the sister of his dead wife, *who is herself the widow of the brother of her future husband*, there is between them only one affinity in the first degree in the collateral line.



In the example given above, Francis, who married Mary, is simply allied to Julia, who married James, the brother of Francis. If, at the death of Mary, Francis were to marry Elsie, there would be between him and Julia a double affinity in the first degree in the collateral line.

142:—DISPENSATION.—The Holy See grants quite readily dispensations from the impediment of affinity in the collateral line, even for the 1st degree.

On the other hand, it is the common teaching that a dispensation is never given for affinity in the first degree in the direct¹⁴⁸ line, when it results from a consummated¹⁴⁹ marriage.

143:—In the powers granted for cases of danger of death and for urgent cases, the Code makes exception, amongst the impediments of ecclesiastical

148:—Gasparri, n. 703; Wernz, 438.—Gennari, Consulations, II, p.278.

Nevertheless, on the 2d of December, 1911, the Penitentiary "*de speciali et expressa apostolica auctoritate*" granted to a petitioner from the diocese of Hexham and Newcastle, authorization to marry the daughter of his legitimate wife. It is true that this daughter was a natural child. The petition had been previously rejected by the Congregation of the Sacraments (*Nouv. Rev. Theologique*, 1912, p. 528).

Father Vermeersch, who published this rescript, seems to hold that the discipline regarding this impediment was gravely weakened by this concession, for, says he, "legitimate or not, the *filiatio* remains essentially the same."

Mgr. Boudinhon (Can.. Cont., 1912, p.662) holds on the contrary that "if the dispensation was possible in this concrete case, it is because the *filiatio* of the petitioner was not legitimate," for the juridical effects of the *filiatio* vary according as it is or is not legitimate. According to him, we are not justified in concluding from this dispensation that, even in an exceptional case, a man could secure permission to marry the *legitimate* daughter whom his wife had brought forth by a previous marriage.

Let us add that the Holy See, replying to an inquiry of the Bishop of Bruges concerning affinity in the direct line in the 1st degree, answered as follows: *Sancta Sedes super impedimento de quo in precibus, minime dispensat* (S. C. Sacr., Oct. 27, 1913) (De Smet, n. 625, note). We may say, however, that for *very grave reasons there are sometimes exceptions to this rule*, at least for cases like that of Hexham, that is to say, when the *filiatio* of the petitioner is illegitimate.

149:—In France and in Belgium, the impediment of civil affinity no longer exists, except in cases where a person wishes to marry the brother or the sister of the spouse from whom the divorce has been secured.

law, of only priesthood and affinity in the direct line *consummato matrimonio*. We may, therefore, grant a dispensation if the affinity had for its origin a valid but non-consummated¹⁵⁰ marriage.

11:—Publica Honestas

Here again we have another impediment that is almost completely transformed by the New Code.

144:—THE FORMER LEGISLATION.—In the former legislation "*publica honestas*" resulted from:

- 1:—Valid betrothals;
- 2:—A valid non-consummated marriage;
- 3:—An invalid marriage.

In the first case, the marriage was forbidden between one of the betrothed pair and the relatives of the other in the first degree, whether in the direct or in the collateral line. In the two other cases, the marriage was declared null between one of the spouses and the relatives of the other to the fourth degree.

145:—THE NEW CODE:—

1:—There is no longer any canonical impediment resulting from betrothals.

2:—The impediment resulting from a contracted but non-consummated marriage disappears as "*publica honestas*," and becomes an impediment of affinity, as we have just seen, diriment of marriage,

150:—Illicit affinity in the direct line no longer exists. But we shall see that same impediment make its appearance under another name, that of *publica honestas*, in the case of concubinage. Moreover, it will be wise in certain cases to remember that the Code forbids the Pastor to assist at the marriage if there is serious doubt as to whether the parties are related in the direct line.

indefinite in the direct line, and up to the second degree in the collateral line.

3:—*As regards the impediment of “publica honestas” properly so called, it arises.*

(1):—from an invalid marriage, either consummated, or non-consummated, no matter what is the cause of the nullity¹⁵¹ (an impediment, or the lack of consent).

(2):—from public or notorious concubinage (Can. 1078).

In both cases, the impediment is restricted to the first two degrees in the *direct* line, that is to say, it forbids the marriage of one of the spouses with the grandparents, the parents, the children, and the grandchildren of the other (whether legitimate or illegitimate).

146:—For the existence of the impediment, it is sufficient if there is the *social semblance of marriage*; the reason which vitiated the contract does not matter.

Civil marriage is enough to create this semblance of marriage.

Moreover, it is not even necessary that their living together shall have begun with a semblance of a contract. It is enough if there was a “free union,” a prolonged cohabitation¹⁵² which was known to the public. That is, in certain localities, a kind of institution which is becoming more and more common. It will be prudent to inquire concerning the antecedents of certain persons who, af-

151:—We have already seen that a valid marriage produces the impediment of affinity.

ter a public and more or less prolonged concubinage, wish to contract a regular union with a relative in the first degree in the direct line of their companion in sin.

147:—In certain cases, which are, however, quite rare, there may be a double impediment of *publica honestas*, for example in the case of a man who, after having lived in concubinage successively with two sisters, wishes to marry their mother.

The Church can grant dispensations from the various forms of this impediment. But when a man who has lived in concubinage with a woman, wishes to marry her daughter, it must be clearly established that these relations did not immediately precede the birth of the girl; if there remains any serious doubt as to whether the man is the father of the girl he wishes to marry, the Church will not grant a dispensation.

In the second degree, in the direct line, *honestas publica* constitutes merely a minor impediment; this kind is rarely met with.

12:—Spiritual Relationship

148:—It is unnecessary to explain the complications which this impediment presented in the former legislation. It sprang from two sources, Baptism and Confirmation.

152:—Cohabitation is not absolutely necessary in order to constitute concubinage; frequent relations, especially for a long period of time, between the same man and the same woman, if they are known to the public, may suffice to constitute the impediment of *publica honestas*.

149:—For the future there is no longer any impediment of spiritual relationship resulting from Confirmation.

Moreover, the impediment of spiritual relationship which results from Baptism¹⁵³ is considerably diminished. It forbids marriage only between:

(1):—The Baptized and the person who baptizes;

(2):—The baptized male and his godmother¹⁵⁴ or the baptized female and her godfather (Can. 1079 and 768.)

The impediment likewise results from private baptism given in cases of necessity; but for this it

153:—By the word “baptism” we must understand the act of pouring the water while pronouncing the sacramental words. He who merely supplies the ceremonies of baptism, does not baptize.

The essential condition for the existence of the impediment is the valid and certain administration of the sacrament. Hence, if the child had been given private baptism by a midwife at home, the baptism given at the church would not produce any impediment.

In cases where doubt has made it necessary to repeat the baptism conditionally, either the reasons alleged for the validity of the first baptism were worthless and the impediment arises from the second baptism, or those reasons were of a serious nature and in this case neither the first nor the second baptism produces the impediment, unless it was the same persons who took part in both ceremonies. But in both cases, if the validity of one of the baptisms afterwards becomes certain, that is the one that must be regarded as the source of the impediment.

154:—In order to be a real godfather or godmother, one must: 1:—have been baptized himself; 2:—have agreed to act as sponsor; 3:—hold or touch the child during baptism, either personally or by proxy; 4:—have sufficient discretion to assume this office (such a discretion as is not possessed by infants, insane persons, drunken persons, etc.); 5:—not be a heretic, or schismatic, nor declared excommunicated, nor *infamis* in the juridical sense, nor excluded from ecclesiastical acts, nor a deposed or degraded cleric; 6:—not be either the father, the mother, the wife, or the husband of the person baptized; 7:—have been chosen to act by the person baptized, or by his parents, or guardians, or, finally by the minister of the baptism.

is necessary that the person who holds the child shall truly assume the role of sponsor.

The role of sponsor may be discharged by a proxy; and in that case it is not the proxy but the sponsor who contracts the impediment, provided that he has accepted this function in advance and has personally designated his proxy.

150:—The most common kind in former times—the impediment between the sponsors and the parents of the baptized person,—no longer exists.

Moreover, spiritual relationship is classed amongst the minor impediments.

The impediment can be double only in the case where the godfather would himself administer baptism to his godchild, or the godmother to her godson.

13:—Legal Relationship

151:—When the civil code of any country makes legal relationship, the result of adoption, a diriment impediment, the ecclesiastical law “canonizes” this impediment and imposes it on the consciences of Christians with exactly the same extension.

Chapter Two

DISPENSATION.

ARTICLE I

The Power of Dispensing.

152:—A matrimonial dispensation is an act of jurisdiction by which the ecclesiastical superior removes, in a particular case, the impediment which prevents the validity or the liceity of a marriage.

Unquestionably the first duty of a Pastor when the contracting parties are bound by an impediment, is to endeavor to dissuade them from their project of marrying; but these endeavors are usually fruitless at the time when the parties present themselves to the priest. Consequently recourse must be had to a dispensation.

We shall now consider the respective powers of the Sovereign Pontiff, of the Ordinaries, and of simple priests in the matter of dispensations.

I:—The Power of the Sovereign Pontiff.

153:—Evidently it is the Sovereign Pontiff who has, in the matter of dispensations, the fullest power. He is, moreover, the only one who possesses the power, by virtue of his office, to suppress, even in a particular case, the effects of a general law.

154:—Nevertheless this power is not absolute. With regard to dispensations, impediments may be divided into four classes.

(1):—*Impediments from which the Church cannot dispense.* These are the impediments which result from the natural law, such as perpetual impotency, consanguinity in the direct line in the first degree, age which does not yet possess the use of reason, absolute fear or violence which prevents the necessary consent, ignorance, error concerning the person, insanity. The same is true of the impediment of previous marriage bond; it is of the natural law or the divine positive law.

(2):—*Impediments from which the Church never dispenses.* These are the impediments concerning which there is doubt as to whether they are of the natural law, for instance, consanguinity in the direct line beyond the first degree, consanguinity in the collateral line in the first degree.

The same may be said of the impediment of public crime when there has been a murder, of the impediment of abduction, of the impediment of affinity in the direct line in the first degree, and of the impediment of the episcopal order.¹⁵⁵

(3):—*Impediments from which dispensation can be obtained only with difficulty* and for truly grave reasons. Such are the impediment of age, or sacred orders, of clandestinity, of occult crime when there has been a murder, of disparity of worship, (especially when the infidel party is a Jew or a Mussulman).

(4):—For the other impediments (consanguinity, affinity, *publica honestas*, spiritual relationship,

155:—Nevertheless, these impediments, even affinity if it results from a non-consummated marriage, are not excepted in the faculties granted to Ordinaries for exceptional cases.

legal relationship), dispensations are more easy to secure, especially when they are of minor degree.

However, there must be grave reasons to secure a dispensation from the impediment of mixed religion, although it is merely prohibitive.

155:—THE ORGANS OF THE HOLY SEE:—This power of dispensing is exercised by the Sovereign Pontiff through the Curia.

(1):—*For the Latin Church.* The Holy Office is charged with the granting of dispensations from disparity of worship and mixed religion (Can. 247, §3.)

The Congregation of Religious gives dispensations from the vow of chastity to members of Congregations and of societies which practice the common life (Can. 251, §3.)

The Congregation of the Sacraments gives all the other dispensations in the *forum externum*¹⁵⁶, that is, dispensations from public impediments.¹⁵⁷

The tribunal of the Penitentiary gives dispensations from occult impediments¹⁵⁸ and for the *forum internum* (Can. 258).

156:—When the ecclesiastical jurisdiction has in view only the private utility of the faithful and the peace of their conscience, it is called jurisdiction for the internal forum; when it concerns the welfare of society, it is called jurisdiction of the external forum.

A dispensation in the internal forum regularizes the status of the parties before God alone; a dispensation in the external forum produces, moreover, effects sanctioned by the social authority of the Church.

157:—An impediment is public when it can be proven in court, either because it is based upon a fact of the public order, such as marriage, baptism, etc., or because it results from a fact that is known to a sufficient number of witnesses.

158:—Any impediment is occult which cannot be proven in court
(Note continued on page 122)

(2):—*For the Oriental Church.* Dispensations concerning the faithful of the Oriental rites, with the exception of those which pertain to the Holy Office and the Penitentiary, are given by the Congregation for the Affairs of the Oriental Church.¹⁵⁹

156:—NOTE:—We must make a distinction between the *sacramental* internal forum and the *non-sacramental* internal forum.

In both cases, the dispensation is asked for under fictitious names, and, when occasion requires, in the petition for the dispensation the reasons are given for fearing that the impediment may become public.

If the dispensation is granted for the *sacramental* internal forum, it must be fulminated in the tribunal of Penance; it has no effect in the external forum, and if the impediment becomes public, recourse must be had to the Congregation of the Sacraments for a new dispensation.

If the dispensation is granted for the *non-sacramental* internal forum, it is fulminated outside the tribunal of Penance, with the real names of the

and which is subject only to the judgment of God and conscience.

In order that an impediment may be *absolutely occult*, it is necessary that it be known by no more than one person other than the parties themselves and the confessor; and sometimes even one single witness would be enough to prevent the marriage.

However, we may ordinarily consider as occult an impediment which known to only two, three, four, or five persons, according to the number of inhabitants in the place.

159:—At the death of the Sovereign Pontiff, these organs of the Holy See retain their powers, but it is recommended that they refrain from dealing with cases of major importance that are not urgent.

parties involved. In case the impediment becomes public, it is not necessary to secure a new dispensation for the external forum. Moreover, the dispensation must be inscribed in a special register which must be kept very carefully in the secret archives of the Chancery, to serve in case the validity of the marriage is attacked (Can. 1047).

In cases where the powers granted by the superior authority do not state whether it is a question of the internal or the external forum, the dispensation applies to both, unless the nature of the impediment indicates the contrary.

2:—The Powers of the Ordinary ¹⁶⁰

157:—Strictly speaking, the Ordinary has no right to grant dispensations, since the impediments are established by the general laws applying to the whole Church (Can. 81).

All his power in this matter comes to him by way of concession from the Holy See, a concession which is based on the common law (ordinary power), or on a special indult (delegated power) (Can. 1040).

The Ordinary may exercise these powers only in the case of his own diocesan subjects ¹⁶¹ or in the case of nomads who are actually in his diocese.

160:—Under this appellation we are to include the Bishop, his Vicars General, the Administrator Apostolic, and the Vicar Capitular when the See is vacant. In countries where the hierarchy is not organized, the term "Ordinary" includes the Vicars- and Prefects-Apostolic, and those who, at their death, regularly assume the administration of the territory.

161:—At the point of death the Ordinary can dispense all those who are in his territory (n.165); the law permits him also to dispense
(Note continued on page 124)

But it is enough if one of the contracting parties fulfills this condition, and it is not required that the Ordinary or his subjects be actually within the limits of the territory of the diocese.

Whenever the Ordinary has the power to grant a dispensation, he has at the same time the power to absolve (but only for this special purpose) from the ecclesiastical penalties which might interfere with the effect of the dispensation.

Finally, this dispensation includes the legitimization of children born or to be born, with the exception of children born of adultery or sacrilege.¹⁶²

(a):—*Ordinary Power.*

158:—By this word we mean the ensemble of powers which the Code grants to the episcopal charge.

We have already seen that, at any time, the Ordinary has the right to dispense from vows not reserved to the Holy See (Can. 1309) (see n.82).

Moreover, in a case of doubt as to the fact (v.g., if there is doubt as to whether the contracting parties are related by blood or by marriage), the Ordinary can give a dispensation from any impediment from which the Church is accustomed to dispense (Can. 15).

from non-reserved vows "his own diocesans and even travellers" (Can. 1313, §1).

162:—The Ordinary can grant dispensation either *in forma gratiosa*, that is, directly, without any intermediary, or *in forma commissoria*, by delegating some priest, Pastor or Confessor. The first method avoids certain risks of nullity. The Ordinary states the origin of his power (ordinary or delegated), absolves from the censures, imposes a penance where that is required, pronounces the dispensation, and legitimizes the children, if there are any. The priest has only to make the dispensation and its details known to the parties.

These are the only powers which he possesses by virtue of his office, in circumstances where recourse to the Holy See is possible and easy.¹⁶³

159:—But the Code also accords him far greater powers in two exceptional circumstances; in case of danger of death to the contracting parties, and in urgent cases where it is impossible to ask a dispensation from the Holy See.

160:—IN GRAVE DANGER OF DEATH¹⁶⁴ of one or both the contracting parties, the Ordinary, to tranquillize the conscience of a dying man or to legitimize the children, can dispense *from the required form* of the celebration of marriage, and from all the impediments of the *ecclesiastical law*¹⁶⁵ whether public or occult, with the exception, however, of the impediments resulting from priestly ordination, and from affinity in the direct line when the marriage has been consummated. (Can. 1043).

161:—This power includes all the impediments of the ecclesiastical law, prohibitive or diriment; it applies to marriages whether already contracted or to be contracted. It matter little whether the interested parties are united civilly, are living in concubinage,

163:—The Ordinary can dispense also from the publications of the banns, and allow the solemn blessing during the forbidden time; but these are not impediments properly so called.

164:—The text reads "*periculo*" and not "*articulo*." The danger of death is present when there is a serious illness which will probably cause death; the "point of death" is when the agony takes place or thereabouts. (Can. Cont. July 1909).

165:—Nevertheless these powers do not include the authorization to grant dispensations *in radice*.

or are separated; whether they were in good or in bad faith in concealing the impediment; it matters little whether the impediment affects the one who is in danger of death or the one who is in good health, whether the danger comes from a sickness or from some extrinsic cause, like a surgical operation, the approach of a battle, etc.

162:—The Ordinary can authorize the celebration of the marriage without the presence of the pastor or witnesses, by a simple exchange of consent.

It is evident, of course, that so far as is possible the presence of the priest must be required; but if the civil marriage cannot be performed, it is permitted, in order to avoid disastrous consequences, to authorize the marriage before merely two witnesses, or even without any witnesses at all.

163:—The Ordinary can dispense from the impediment of deaconship or subdeaconship, but in this case particularly, he must take precautions to avoid scandal, either by securing from the parties a pledge that they will leave the country, or by imposing on them severe penance and the leading of an exemplary life.

164:—For the impediments of disparity of worship and mixed religion, he can give dispensations only if the contracting parties consent to the conditions demanded by the Church in such cases. (See n. 89).

It is a condition here of a condition of validity,

while the preceding is required only for the liceity of the dispensation.

165:—Finally, the Ordinary possesses this power over all the faithful who are his subjects, and also over all those persons who are at the time within his diocese.¹⁶⁶

166:—By the very act of the dispensation, and without any other act of jurisdiction, the children born of this union are legitimate, except those which may be in the fruit of adultery or sacrilege (Can. 1051).

167:—IN URGENT CASES, that is, when an impediment is discovered when everything is in readiness for the marriage and when a dispensation from the Holy See cannot be waited for without grave inconvenience, the Ordinary possesses the same powers¹⁶⁷ as in the case of danger of death, with the same extension and the same restrictions (Can. 1045, §1).

168:—It is a case of urgency, when the impedi-

166:—The Pastor has the right to decide, according to the circumstances, whether it is enough to secure from the parties a public reparation for the scandal caused by their actions, or whether it is necessary, when there are children, to urge them to regularize their social status. The marriage will very often be found to be an excellent means of repairing the scandal given.

167:—There is a controversy concerning the power of the Ordinary to dispense, in urgent cases, from *the required form*. The bone of contention is that Canon 1045 refers merely to the impediments mentioned in Canon 1043, while the latter indicates at one and the same time the impediments and the *required form*, as susceptible of dispensation.

In practice, we do not see the necessity of dispensing from the required form in cases where all the preparations are made for the marriage, which regularly supposes the presence of the necessary witnesses.

ment is discovered too late for recourse to Rome and when the parties cannot or will not delay their marriage.

If they allege a serious reason (for instance, the necessity of being married at once in order to take a situation, to make a long trip which cannot be postponed, the fact that the preparations for marriage have all been made and the invitations issued,) the Ordinary can grant the dispensation.

Sometimes the contracting parties know of the impediments which affects them, but through negligence or bad faith make it known to the Pastor only when it is too late to secure a dispensation in time. Even in such cases, the Ordinary can make use of his powers.

169:—The same would hold good if the delay in securing the dispensation were due to the negligence of the Pastor, of the Chancery, of the Congregation, or of the postal service.¹⁶⁸

Even after the dispensation has been demanded from Rome, if grave circumstances demand the immediate celebration of the marriage, the Ordinary can grant the dispensation; but in this case he must notify the Holy See of the fact.¹⁶⁹ (Can. 204, §2).

170:—The Ordinary has even the power of dispensing *in order to revalidate a marriage already*

168:—The Ordinary can dispense, even in cases where it would be possible to secure a dispensation by telegram, because this method of approaching the Holy See, because of its drawbacks, is not habitually admitted by the Congregations.

169:—It would be seriously sinful neglect not to take in time the necessary steps regularly to secure the dispensation.

In urgent cases, the Pastor must not forget to mention in the petition the reasons which make the case urgent, and to state the date fixed for the celebration of the marriage.

contracted but null because of an impediment which was not known, when there would be danger in waiting for a dispensation from the Holy See (Can. 1045, §2).

If the Pastor cannot persuade the parties to separate until the regular dispensation has been secured,—and this may well happen very often—it would be a sufficient reason for the Ordinary to give the dispensation himself.

Note:—These powers given to the Ordinary are in themselves quite ample. Let us add that there is no reason why he cannot delegate them as he pleases, in whole or in part, to all his priests or to certain individuals (which is preferable). At any time, he can delegate the power to dispense from the banns, to dispense from non-reserved vows, from doubtful impediments; for urgent cases and for marriage at the point of death, he can delegate the power to dispense from all the impediments enumerated in Canon 1043.

(b):—*Delegated Power.*

171:—This is the power which is granted by indult from the Holy See, a power which the Ordinary possesses only by virtue of a mandate and in a temporary fashion, and which he exercises in the name of the Sovereign Pontiff.

Moreover, a dispensation which is granted by virtue of a delegated power must always explicitly mention the Pontifical indult. (Can. 1057).

172:—These powers are usually granted for a certain number of years or for a certain number of

cases, and they pertain to one or more clearly specified impediments.

They do not expire at the death of the Sovereign Pontiff who granted them, nor at the death of him who obtained them. The Vicar Capitular can use the powers obtained by the dead Bishop, and the new Bishop can use the powers obtained by the Vicar Capitular.

173:—These indults were formerly numerous and varied according to the dioceses and especially according to the countries. The Holy See granted them in the measure in which they were necessary for the religious needs of each nation.

After the New Code went into force, by reason of the very ample powers granted to Ordinaries for urgent cases, these indults were in large measure suppressed. Nevertheless, on the 7th of March, 1921, the Sacred Consistorial Congregation declared prorogued, until the question should be definitely settled, the powers granted during the war to the Ordinaries of remote dioceses or even of dioceses in Europe.¹⁷⁰ Today it is that same Congregation which accords to Ordinaries who ask for them the “quinquennial faculties” relative to dispensations for marriages¹⁷¹ (cf. Appendix).

These indults ordinarily permit the granting of dispensations, for a just and reasonable cause, from minor impediments, and, when a grave and

170:—For European dioceses (Russia excepted) these powers were not granted except when it was impossible or difficult to secure the dispensation from Rome within a month.

171:—*Motu Proprio* of S. S. Pius XI, April 20, 1923.

urgent reason does not allow recourse to the Holy See, from the major impediments from which Rome is accustomed to dispense. They grant even the power to revalidate by a *sanatio in radice* marriages which are null because of some minor impediment, when it would be seriously inconvenient to secure a new consent from one of the parties.

For missionary countries, these powers are still more ample.

174:—The Code gives, amongst others, the following general rules concerning the interpretation of these indults:

The power to grant a dispensation from a certain impediment includes the power to grant a dispensation even in cases where that impediment is multiple, unless the contrary is stipulated.

175:—The power to grant a dispensation from several impediments of different species, prohibitive or diriment, includes the power to grant a dispensation even in cases where these various impediments are united. (Can. 1049).

176:—When, in the same case, there is a public impediment¹⁷² from which the Ordinary can dispense by virtue of an indult, and an impediment from which he has not the power to dispense, he must have recourse to the Holy See and ask for the dispensation from both impediments.

172:—This restriction refers only to *public impediments from which the Ordinary dispenses by virtue of an indult*. If, therefore, there is, together with the impediment reserved to the Holy See, an occult impediment, or a public impediment from which the Bishop has absolute power to dispense, (v.g., a non-reserved vow), it will not be necessary to have recourse to Rome for this second impediment.

If, however, the impediment covered by the indult is discovered only after the recourse to Rome and the concession of the rescript, the Ordinary may dispense from it. (Can. 1050).

177:—When the Ordinary grants a dispensation, he must demand only a small retribution for the costs of the chancery; he is forbidden to ask for a fee properly so called—and this under pain of restitution—unless he is expressly authorized to do so by the Holy See.¹⁷³ (Can. 1056).

3:—*The Powers of the Pastor and of the Confessor.*

178:—We do not refer here to the delegated powers which certain priests may possess by virtue of special concessions.

We refer solely to the powers explicitly conceded by the Code and attached to the charge or to the office of the priest under certain circumstances.

The Pastor may use these powers on behalf of his parishioners or of nomads who are within his territory; he may also use them on behalf of strangers in danger of death who are at the moment within his territory.

The Confessor may dispense all those whom he has the power to absolve.

179:—(1):—IN CASE OF DANGER OF DEATH, but only when recourse to the Ordinary is impossible,

173:—The indult of the Sacred Consistorial Congregation contains a special clause on this subject. The prescribed fee which is received by the Ordinary must be forwarded to the Holy See.

the *Pastor* has the same powers as the Ordinary himself.¹⁷⁴ (See n. 160).

174:—Here are some decisions on the case that occurs most often. This happens at the deathbed of the penitent. The priest who is summoned to attend a person who is seriously ill, discovers an irregular situation, and, in addition, an impediment to the marriage of the parties. What is he to do?

1:—In the first place, he must ascertain whether marriage is possible. When the impediment is *de jure divino*, or when it is the result of the priestly order or of affinity in the direct line resulting from a *consummated marriage*, or when the other party refuses to give his consent, there is no hope of the revalidation of this false union. The only thing to do is to induce the sick person to make his peace with God by the reception of the sacraments, at least of the sacrament of Penance. For this it is enough, strictly speaking, if he promises sincerely to do his utmost, if God gives him back his health, to quit this irregular situation, either by persuading his spouse to consent to marry regularly, or by separating from her. If this promise is made before witnesses, a religious funeral may be given him; if it is made before the confessor alone, it cannot be acted upon in the external forum.

2:—If it is found that the marriage is possible then the question arises as to whether the conscience of the dying man can be tranquillized by putting an end to the scandal of public concubinage or civil marriage, or by removing the proximate occasion of sin, or by permitting the dying man to repair the grave wrongs for which he has been responsible; the question also arises of legitimizing the children born of this false marriage or concubinage.

3:—This decision is quickly made, as is also the decision as to whether it is impossible to have recourse to the Ordinary, on account of the sickness of the dying man, or the danger of violating his secret. The priest then makes certain of the *free status* of the parties; ordinarily it is impossible to make a minute inquiry, or to insist on having baptismal certificates. But the Code itself indicates a special method of procedure (Can. 1019, No. 2). In danger of death, when we cannot otherwise obtain certainty regarding the *free status* of the parties, it is enough, unless the contrary is evident, to have the parties take a supplementary oath, having them swear that they are not bound, either of them, by any previous and still subsisting marriage, and that there is between them no other impediment to their marriage than that (or those) which they have now made known.

4:—Then the priest accords the necessary dispensation (see n. 264 or 265). There is no prescribed formula for this; it is enough if he mentions the author and the subject of the dispensation and the nature of the impediment.

5:—Finally, he must receive the mutual consent of the parties.

(Note continued on page 134)

He can dispense from public as well as from occult impediments, and the dispensation entails the legitimization of the children, unless they are the fruit of adultery or sacrilege.

The Pastor may use this power even when it is possible to have recourse to the Ordinary by telegraph or telephone. It is not so, however, when the dispensation can be secured by sending the Ordinary a special delivery letter. (Decision of Nov. 12, 1922; Acta. 14-662).

The fear of violating the secrecy of the confessional, or even of violating a natural secret, is a sufficient reason for considering recourse to the Ordinary impossible; but in such a case we must first see whether or not recourse to the Holy See is likewise impossible.

If they have already married civilly, and if both of them are willing to contract anew before the priest and two witnesses, there is no difficulty.

But if they are concubines, and if it is impossible to have them first married civilly, the priest who assists at their marriage exposes himself, in certain countries to some risk, usually of trivial import. Quite recently fines have been imposed on priests in France for this offense. What, then, should the priest do?

He may either choose to run the risk of these fines, or he may *give a dispensation from the impediment of clandestinity*, and, as occasion demands, receive *alone* the mutual consent of the parties, or he may permit them to exchange their consent before two *witnesses only*, relatives, friends, or neighbors. If none of these means is possible, the only thing to do is to prepare the dying man to die well.

Let us remember that in order to revalidate a marriage, if it is a question of an *occult* impediment that is unknown to the other party, it is enough if the dying man alone renews his consent secretly; if it is known by both parties, both of them should give their consent, but without witnesses.

6:—As soon as possible after the marriage, the officiating priest will inform the Ordinary of the dispensation that he has granted either for the external forum or for the non-sacramental forum.—In the first case, he must, moreover, record the marriage in the ordinary Register, and, if the case demands it, record also in the Baptismal Register the legitimization of the children.

180:—*Any priest* who, in the absence of the qualified Pastor, is asked to officiate at the exchange of consent of two persons one of whom is in danger of death, likewise has the same power of dispensing.

In a case of this kind, the Pastor or the officiating priest must, at least if time permits, write out the dispensation (see n. 264), make a record of it in the Marriage Register, and at once notify the Ordinary of the concession. (Can. 1046).

181:—Finally, the *Confessor* enjoys the same power, but only for *occult cases* and *in the sacramental forum*. (Can. 1044).

If, therefore, during the course of the confession of a dying person who wishes to regularize his marriage, the confessor discovers an *occult* impediment, he can grant the necessary dispensation immediately after the absolution (see n. 265), but he must not make any mention of it in the Marriage Register, nor report it to the Chancery.

182:—(2) :—IN URGENT CASES, that is, when everything is ready for the marriage and it is not possible to have recourse even to the Ordinary (except by telegraph or telephone) (cf. n. 179), or in cases where recourse cannot be had without danger of violating a secret (especially if it is a question of the secrecy of the confessional), all the priests spoken of above (Pastor, the priest who officiates in the absence of the Pastor, the Confessor), can *in occult cases*, dispense from impediments discovered at the last moment.

N. B.:—It is easy to see the difference between this case and the case of danger of death; in

this case only *occult impediments* can be dispensed from by a simple priest.

It would seem, however, that this power refers not merely to impediments which are occult by their very nature, but also to impediments which are occult *de facto, even though public by their nature*. For the Code speaks not of impediments which are occult, but of *occult cases*! Now when, at the moment appointed for the marriage, that is, in an urgent case, discovery is made of an impediment which is public by its nature but unknown to everybody (for instance, spiritual relationship, blood relationship of the two contracting parties which is not known in the parish, etc.,) we have the occult case considered by the Code. If there would be any grave inconvenience in postponing the marriage in order to have recourse to the Ordinary (and this would usually be the case) the Pastor, or the priest who is officiating at the marriage, can grant the dispensation.¹⁷⁵

183:—The whole affair may take place in the confessional; on the eve of his marriage, a penitent reveals an occult impediment to his marriage (such as a vow of chastity, crime, illegitimate consanguinity). The Confessor makes certain that this impediment is not known to the public, and then gives

175:—Certain authors do not grant this power to the officiating priest except when it is a question of revalidating a marriage (for instance, when it is a question of two parties whom everybody believes to be validly married, who went thru the marriage ceremony in the Church, and have lived in this manner for many years). The Code, it would seem to us, extends this power also to marriages which are just being contracted.

a dispensation from it after the absolution, just as in the case of danger of death.¹⁷⁶

It all takes place in the sacramental forum; there is no trace left of the dispensation, and if the impediment becomes public, another dispensation must be secured for the external forum.

184:—But the Pastor, or the officiating priest, may receive this confidence outside the confessional. Some hours before the marriage one of the contracting parties comes to see the Pastor and reveals an impediment to him. If it is a *public* impediment (that is, if it is publicly known), the only thing to do is to postpone the marriage and at once have recourse to the Ordinary. If the impediment is *occult* (that is, not known to the public), and if there would be a grave inconvenience in postponing the marriage in order to have recourse to the Ordinary, the Pastor, or the officiating Priest, gives a dispensation from it in the internal *non-sacramental* forum.¹⁷⁷ He must then record this dispensation in the secret Register of the Chancery, that there may be proof available in case of the impugning of the validity of the marriage later on.¹⁷⁸

176:—If it were a question of an impediment which was public *de facto*, the penitent should be advised to make it known outside the confessional. If he refuses to do this, the Confessor is bound, even while refusing absolution to the sinner, to proceed with the marriage and afterwards to take steps to revalidate it (Gasparri, 768-769).

177:—This dispensation produces the same effects as a dispensation in the external forum. The only difference is that it is not made public. The public will remain in ignorance of it so long as it is not necessary to make it known.

178:—Have vicars this same power of dispensing, in cases of danger of death and in urgent cases?—They are not mentioned by the Code; and in fact, as vicars, they have not the right, without special

185:—Such are the means provided by the Code to meet the difficulties which may arise from exceptional circumstances.

It now remains for us to set forth the procedure to follow in securing dispensations under ordinary circumstances.

ARTICLE II PROCEDURE CONCERNING DISPENSATION

(1):—*The Cause for Dispensation.*

186:—Every dispensation supposes a just cause, proportioned to the gravity of the impediment.

A dispensation which would be granted by the Ordinary without a reason, would be not only illicit, but null and void. (Can. 84, §1).

187:—Not all causes are of the same importance. It is well to give several causes, when possible, beginning with the chief ones.

Most of the reasons for asking dispensations refer to the woman; they have for the object the difficulty she would have in establishing herself in life, or in establishing herself satisfactorily, if the dispensation were refused.

188:—The following are the causes most frequently given, and the most useful to know:

(1):—*The smallness of the locality (angustia loci).* This case is sufficient of itself in most cases.

or general delegation, to assist validly at marriages. But in the absence of the Pastor, they have that power, in common with all other priests (n.180). Moreover, as this power of dispensing is an ordinary power for the Pastor, he may delegate it to any priest, within the limits of his parish, and he will act prudently if he does so delegate it to his vicars.

It exists when the place of origin or of domicile of the petitioner has not more than 1500 inhabitants, and when, without leaving the place, she cannot without difficulty find another husband of her own condition of life.¹⁷⁹

(2):—*The advanced age of the woman*, who, having passed the age of twenty-four, would have difficulty in finding another suitable husband. This cause suffices up to the age of forty.

For a widow, instead of “advanced age,” we should, if possible, allege “youthfulness” (*junior aetas unde periculum incontinentiae*).

(3):—*The absence or the insufficiency of dowry*, when the poverty of the woman prevents her making another equally advantageous marriage..

(4):—*The welfare of the children* of a widow or of a widower, who would find in the contemplated marriage a means of properly bringing up the family.

(5):—*The blessing of peace*, when the marriage would settle quarrels and family strife, or put an end to a lawsuit.

(6):—*The revalidation of a marriage* which has already been contracted. This cause is sufficient in the case of all marriages which need revalidation, especially if there is scandal which the revalidation will end.

Even when the marriage was contracted in bad faith, the Holy See does not refuse a dispensation.

(7):—*The fact that the woman is an orphan*.

(8):—*The similarity of the religious sentiments of the petitioners*.

(9):—*Eminent services rendered the Church.*

(10):—*Too great familiarity*, the cause of suspicion or danger; or cohabitation under the same roof.

(11):—*Sinful relations*, whence the necessity of safeguarding the honor of the woman, and perhaps of legitimizing the children, born or to be born.

(12):—*The dishonor of the woman*, resulting from grave suspicions concerning her relations with the man, and consequent difficulty for her in securing another marriage.

(13):—*The termination of a scandal* or of a public concubinage.

(14):—*Well-founded fear of a purely civil marriage.* (State the basis of this fear.)

189:—There may be other “just and reasonable” causes, such as the special status of one or other of the petitioners, the necessity of their marrying as soon as possible, the poverty of the woman, the fact that she is an illegitimate child, or that she is sick, the desire to keep property in the same family, a civil marriage already contracted, familiarity of long standing between the petitioners, the impossibility or the great difficulty there would be in dissuading the parties from their intention of marrying, etc.

179:—In order that the motive of *angustia loci* may be present, it is enough if the village where the bride lives is a mile distant from any larger center.

Moreover, this cause is not truly present unless the woman is at the moment unsought in marriage by any other young man of equal condition in her village. If she were, or if, being offered a desirable match elsewhere, she were willing to leave her present home, the *angustia loci* would not be of itself a sufficient cause for the dispensation.

2:—*The Drawing Up of the Petition.*

190:—FOR PUBLIC IMPEDIMENTS, it is the Pastor of the woman who regularly should draw up the petition¹⁸⁰ for the dispensation; for it is he who best knows the causes to invoke to secure the dispensation.

He draws it up in the name of the two parties, if they are Catholics and if the impediment is correlative; in the name of one party only, if the impediment affects only that one, or if the other party is a non-Catholic.

It is not proper to request a dispensation without the knowledge of the parties, except for a revalidation of marriage; but the dispensation is valid without their consent. (Can. 37).

Regularly, all the petitions for dispensations should be sent to the Ordinary.

Dispensations should not be requested by telegram or telephone.

191:—FOR OCCULT IMPEDIMENTS, it is the Confessor who draws up the petition with fictitious names.

He may submit the case to the Ordinary, just as for a dispensation in the *forum externum*. But if he is afraid of violating the secrecy of the confessional, he should address the petition to the Cardinal Penitentiary, and send the letter to him either directly or through the Chancery.¹⁸¹

180:—In any case, no priest should undertake to secure a dispensation if he is not the pastor of the bride or of the groom.

181:—It is enough in this case, to send with the sealed petition, a letter stating that it is a case of conscience, and giving the address to which the reply shall be sent unopened.

192:—THE INFORMATION TO FURNISH.—The petition should give:

(1):—The name, surname, age, and domicile of each petitioner,¹⁸² except in occult cases.¹⁸³

(2):—The number, nature, and degree of the impediments. Great care must be taken to state the special character of the impediments, to say whether it is a question of consanguinity or of affinity, to indicate the species of the impediment of crime or *public honestas*, etc., to declare the degree of the impediment, to say whether that degree is equal or unequal, whether the impediment is simple or multiple, etc.

However, if an involuntary error regarding the degree of relationship or affinity is made in the petition, or in the dispensation itself, the dispensation is valid, provided that the real degree is inferior to that which was specified. If the request was made for the second degree when really it was a question of the third degree, the dispensation is valid; but if the request was made for the third de-

The petition may be written in French or Italian; but it is better to write in Latin.

If recourse is had directly to the Holy See, the letter should be addressed to: The Cardinal Grand Penitentiary, Palazzo di S. Uffizio, Via di S. Uffizio, Roma, Italy.

182:—There is no reason to hold that a dispensation is null because there is in the rescript an error in the name of the person or in the residence (which, moreover, is never mentioned), nor even because there is an error regarding the favor demanded, provided that, in the judgment of the Ordinary, the rescript really refers to the petitioners and the dispensation which they asked for. (Can. 47).

183:—For occult cases, fictitious names should be used, such as Titius, Titia, etc. But if the dispensation is granted for the non-sacramental forum, the confessor must inform the Ordinary of the real names of the parties.

gree when really it was a question of the second degree, the dispensation is null.¹⁸⁴

The dispensation is likewise valid if the redactor has forgotten to mention another impediment of the same species, of the same or of an inferior degree. (Can. 1052).

For instance, the request is made for dispensation from an impediment of consanguinity in the second degree, and after the fulmination, it is discovered that the impediment was double, or that there was another impediment in the third degree. In this case, the dispensation is valid.

It would be null, however, if, besides the impediment of consanguinity mentioned, there were an impediment of affinity in the second degree, or an impediment of spiritual relationship of which no mention had been made.¹⁸⁵

(3):—The genealogical tree of the petitioners as a proof of the impediment of consanguinity, to enable the Officialty to be certain of the nature and the exact degree of the impediment.

184:—When it is a question of an unequal degree (consanguinity from the 2d to the 3d degree) and when the rescript mentions only the 3d degree, the dispensation is valid, because *gradus remotior trahit ad se proximiorum*.

185:—When, in one and the same case, there is an occult impediment and a public impediment, the Pastor asks first of all for a dispensation for the latter, without any comment. Then the Confessor has recourse to the Penitentiary, stating that the two petitioners are in the course of securing another dispensation in the external forum, and asking the *sanatio* required for this impediment which is null because not all the impediments were mentioned in the petition. In this case, to avoid the danger of disclosing the names of the petitioners, it is preferable to write direct to the Penitentiary, merely requesting the diocesan Chancery to see that the sealed petition is sent to its proper destination.

4:--The reasons for asking the dispensation. It is well to give several reasons, if possible, but only genuine causes must be given; when honorable causes are sufficient, no mention is to be made of causes which would indicate infamy.¹⁸⁶

The rescript from Rome, for ordinary major impediments, considers only one cause (*prae oculis habita causa quae ad optatam gratiam impetrandam potissime affertur, hoc est*) (v.g., *aetas oraticis annorum 24 et ultra*) and it entrusts to the Ordinary the care of granting the dispensation *si vera sint exposita*. It follows from this that if the cause alleged were false, the dispensation would be null.

On the contrary, if the dispensation was granted for a minor impediment (see n. 97), it would be valid, even if the only cause mentioned in the petition were false.

For *in the case of minor impediments*, the dispensation is valid even when in the petition causes have been alleged that have no foundation, or when certain data which are habitually demanded have been omitted (Can. 1054).

If, therefore, after the fulmination of a dispensation from a minor impediment, it transpires that the reason given (age, the smallness of the locality, etc.) did not really exist, there is no reason to be disturbed; the dispensation is valid.

5:--If there are children to legitimize, that is, already born or just about to be born, this fact

186:—It is necessary to state whether it is a question of a marriage to be contracted or a marriage to be revalidated; and in this latter case, to say whether the marriage was contracted and consummated in good or in bad faith.

must be mentioned in the petition, for the subsequent marriage does not legitimize children who are born at a time when, because of an impediment, the parents could not validly contract marriage (Can. 1116).

But the children who are born after the dispensation is secured are legitimate.

(6):—Finally, it is necessary to state the financial condition of the petitioners. The Ordinary will make use of this indication to send to the Holy See an offering which is in keeping with their means.

From the poor only enough is asked to defray the expenses of the Chancery, the commissioner's fees, and to furnish a small alms of which the Ordinary is free to determine the application.

In these days the following are to be considered "poor," viz., those whose fortune is not above 6,000 francs; "almost poor" are those who have from 6,000 to 15,000 francs. Each province has a tariff approved by the Holy See, and all there is to do is to conform to it.

193:—It is a grave obligation on the part of the Pastor to determine the class to which the petitioners belong financially (*Ordo servandus*, *Acta* 1, p. 55). Nevertheless, an error or a bit of forgetfulness in this matter, would not cause the nullity of the dispensation.

187:—In determining the present financial condition, it is necessary to mention the dowry of the petitioners, the property which they have already inherited, the capital which they have tied up in business, the funds which they have invested, the amount of insurance which they carry, in a word, whatever is not needed for the ordinary necessities of life.

To determine the financial rating,¹⁸⁷ we must add together the means (that is, the superfluity) of both the petitioners, if they are both Catholics. Their prospective possessions, at least those which depend on legacies that are morally certain, are generally computed at one-half their value.

For occult dispensations, the Penitentiary does not demand any fee; the commissioner's charges, if there are any, are about "three francs."

194:—The various fees and the usual offering are to be paid to the Holy See, even tho the petitioners should decide not to carry out their intention of marrying.

It is prudent, therefore, to collect this sum at the time when the interested parties present themselves to arrange for the petition for the dispensation.

3:—The Concession and the Fulmination of the Dispensation.

195:—Each diocese ordinarily makes use, in Rome, of a commissioner accepted by the Bishop and accredited by the Congregations. His role con-

188:—We say that a dispensation is granted *in forma grattsosa* when the author of the dispensation gives it directly to the parties interested, without entrusting that task to an intermediary. It is in this manner that dispensations are usually given by the Ordinary, the Pastor, or the Confessor; the impediment is removed at the moment when the dispensation is granted

It may happen also that the Holy See confides to the Ordinary the whole care of granting a dispensation (*forma plene commissoria*). The Ordinary can make use of this power as he wills, and he can even subdelegate it to another. This is the case with dispensations from mixed religion and disparity of worship.

sists of presenting the petitions of the Ordinary, and of forwarding the reply of the Holy See.

196:—The dispensation is most frequently¹⁸⁸ granted *in forma commissoria mixta*, that is, the Holy See imposes upon the Ordinary¹⁸⁹ the care of applying to the petitioners the dispensation which in principle the Holy See itself accords.

The Ordinary is not free to refuse the dispensation; this is a duty which he is bound to discharge, and unless by special permission, he cannot even confide that duty to another.

Moreover, before fulminating the dispensation, the Ordinary (Bishop, Vicar General, Vicar Capitular . . .) must observe the special clauses (rare in these days) which may be inserted in the apostolic rescript, for instance, relating to the promises of the contracting parties who are bound by an impediment of mixed religion. These clauses, like those which are expressed by the words "*si, dummodo*," or by other equivalent terms, are required for the validity of the dispensation.

It is necessary therefore, says the rescript, that the canonical prescriptions be fulfilled, that is, that the regular form of fulmination (n. 200) be observed, that a penance be imposed if the case demands it, that absolution be given from censures, and that, so far as possible, care be taken that the scandal that may have been given by the contracting parties shall be repaired. The most of these pre-

189:—The Ordinary cannot fulminate the dispensation until he has received the rescript from the Holy See, or at least until he has been notified *ex officio* of the granting of the dispensation.

scriptions, even tho they may be expressed by an ablative case, are not obligatory under pain of nullity.

The impediment is removed *only after the fulmination by the Ordinary*, and it is at this moment also that the causes alleged must be realized (Can. 38).

197:—It is the Ordinary who has forwarded the petition or furnished the information required by the Holy See, who is to fulminate the dispensation, even in cases where the petitioners have left the diocese with the intention of not returning.

But in this latter case it is necessary to notify the Ordinary of the place where the marriage is to be celebrated (Can. 1055).

198:—Before fulminating the dispensation, the Ordinary must be morally certain of the exactness of the motives invoked (*si vera sint exposita*). Therefore he may at times instruct the Pastor to institute a second inquiry.

199:—Is this inquiry necessary? Yes, if the Ordinary, for any reason, doubts the exactness of the data that have been given him. For safety's sake, it may be prescribed also if the previous inquiry was not carefully made. In this case, the inquiry bears on the names and identity of the petitioners, the nature of the impediment, the motives for the dispensation, the absence of other impediments, etc. The Ordinary usually entrusts this inquiry to the Pastor of the contracting parties.

But it is never required of itself for the validity of the dispensation. No special clause prescribes it. When the petition was drawn up after a serious inquiry and with the testimony of several witnesses, the Ordinary already has a sufficient moral certainty of the truth of the facts alleged, and there is nothing to prevent the immediate fulfilment of the dispensation.

Moreover, the rescripts of dispensations for impediments of minor degree do not contain the clause "*si vera sint exposita*." The reason for this is that they are never null because of obreption or subreption in the statement of the reasons. In this case, the second inquiry is still less called for.

Note:—This inquiry may sometimes disclose the existence of an impediment of which the petition made no mention. In that case, regularly recourse must be had a second time to the Holy See and dispensation asked for from both impediments at once.

In a case of urgency, the Ordinary can grant a dispensation from both impediments, but must afterwards notify the Holy See of his action¹⁹⁰ (Can. 204, §2).

200:—FOR PUBLIC IMPEDIMENTS, the act of fulfilment must be drawn up in writing (Can. 56), mention must be made of the delegation from the Sovereign Pontiff, and the date of its concession. Mention must also be made of the legitimization of

190:—In case of danger of death, if recourse to the Ordinary is impossible, a simple priest can give this twofold dispensation (n.179).

the children already born, if the rescript accords this power to the Ordinary.

Every Catholic who is under a *sentence* of excommunication, suspension, or personal interdict, cannot, without special absolution, *validly* receive a pontifical favor. In this case the fulmination of the dispensation must necessarily be preceded by absolution from this censure.—This absolution (called *absolutio ad effectum*) does not remove the censure, but merely permits the person who is under the censure to receive the favor asked for.

With the exception of this one case, there is no prescription which requires that this solution *ad effectum* shall precede the fulmination of dispensations; this clause, inserted formerly in the rescripts of the Dataria, is no longer found in the formulas of the Congregation of the Sacraments. It is, however, more prudent to continue to observe it.

The impediment is removed at the moment when the Ordinary signs the act of fulmination.¹⁹¹

If the Pope were to die before the fulmination of the rescript, this circumstance would not prevent the Ordinary from granting the dispensation.

201:—The Pastor must not proceed with the celebration of the marriage until he has received the dispensation.

He must notify the contracting parties of the reception of the dispensation, and must make mention of it in the Marriage Register (and likewise

191:—If, before the fulmination, the marriage was celebrated *ex errore*, the Ordinary can still fulminate the dispensation.

of the legitimization of the children, if this has been done).

It is well to preserve the dispensation in the archives of the parish.

202:—FOR OCCULT IMPEDIMENTS, the fulmination is made in the tribunal of Penance, if the dispensation is given for the sacramental internal forum; in this case it must be preceded by the confession¹⁹² of the party or parties interested.

The Confessor begins by reading carefully the rescript of the Penitentiary; then he questions the penitent as to the truth of the facts exposed in the petition; then he imposes, if the case calls for it, the penance¹⁹³ prescribed (which is independent of the sacramental penance), gives absolution from the censures incurred, and proceeds to the fulmination (n. 263).

If the impediment is the result of a sin imputable to both the contracting parties (v.g., crime), the fulmination must be pronounced over both of them. However, this formality is not required for the validity of the dispensation.

When each of the contracting parties has a special confessor, the first who receives the rescript proceeds to the fulmination, then hands the sealed

^{192:}—The Confessor can fulminate the dispensation, even if the penitent has not the dispositions necessary for the reception of absolution.

^{193:}—The penance varies according to the nature of the impediments. If the rescript mentions a "salutary" penance, we may impose the recitation of five Our Fathers and five Hail Marys for fifteen days; for a "grave" penance, the same prayers for a month and in addition once a day the acts of faith, hope, and charity and contrition, or other similar penances, such as assisting at Mass, receiving Communion, going to confession, etc.

rescript to his penitent; the penitent then hands it to the other of the contracting parties, who has it executed by his own confessor.

This second confessor must, after the fulmination, destroy the rescript so that there shall remain no trace of it.¹⁹⁴

203:—In cases where the dispensation is given for the *non-sacramental* internal forum, the fulmination is made outside the confessional, either *viva voce*, or preferably in writing. It is forbidden to make mention of this dispensation in the parish Marriage Register, but, especially if there is any danger that the impediment may become public, the priest must send secretly to the Chancery the text of the fulmination with the real names of the contracting parties. These data are to be preserved in the secret Register for use in case of contestation of the validity of the marriage.¹⁹⁵

204:—If there was reason to demand one dispensation for the external forum and one for the internal forum, in order to fulminate the second, we must wait until the first has been granted, and pro-

194:—It is not forbidden to make a copy of the rescript, provided that everything is omitted which might reveal the identity of the person for whom it is intended. The fulmination of these dispensations is entirely gratuitous. The Confessor can ask for only enough to reimburse him for the expenses he has incurred in securing the rescript.

195:—The dispensations granted by the Ordinary may be entrusted to the Confessor (*forma commissoria*); they are usually given *in forma gratiosa*, that is, without any intermediary. In this case it is the Ordinary who fixes the penance and fulminates the dispensation; the Confessor has only to inform the interested parties of the clauses of the dispensation.

nounce at the same time the revalidation of the dispensation of the external forum¹⁹⁶.

196:—For this revalidation it is enough to add to the ordinary formula (n.263) the following phrase: *insuper eadem auctoritate convalido dispensationem in foro externo invalide concessam super impedimento (v.g., consanguinitatis in secundo lineae collateralis gradu)*.

Chapter Three

THE REVALIDATION OF MARRIAGES.

205:—What must the priest do when he discovers the nullity of a marriage? The reply to this question varies with the case.

Case 1:—The nullity of a marriage is *public* or is in great danger of becoming public, because it is the result of an impediment of the external forum.

The marriage must, if possible, be revalidated. But, if the revalidation is impossible, because the impediment is one which does not admit of a dispensation, there is no other remedy than a declaration of the nullity of the marriage (n. 244).

Even in certain cases where revalidation would be possible, it is permitted to *suggest* this solution, especially if there are no children and if living together is for one of the parties a danger of perversion or an intolerable martyrdom.

Case 2:—The nullity of the marriage is *occult* and will in all probability remain so.

If the marriage is not susceptible of revalidation and if the parties are really in good faith, *ordinarily* nothing should be said; if they are aware of their situation, they must be made to separate, and, if possible, a declaration of nullity should be obtained.¹⁹⁷

¹⁹⁷:—This is also the procedure to follow when only one of the parties is aware of the irregularity of the situation.

Nevertheless, in certain cases, in order to avoid scandal or grave inconvenience, we may recommend fraternal cohabitation to the parties interested. But we are not to adopt this means indiscriminately; the parties must consent to use all the proper precautions, especially *separatio tori et thalami*.

If, on the contrary, a revalidation is possible, ordinarily steps should be taken to secure it; when the nullity is occult and unknown to both the parties, this revalidation may even be secured without their knowledge (Can. 1138, §3). Nevertheless special circumstances may call for a demand for the declaration of nullity.

This revalidation can be made without securing a dispensation, or by means of an ordinary dispensation, or by means of a dispensation *in radice*. We shall consider these three methods separately.

ARTICLE I

Revalidation Without a Dispensation.

206:—This is the case when the marriage is null either because of

1:—lack of form (presence of the priest and two witnesses) ;

2:—lack of consent;

3:—an impediment which has disappeared of itself.

207:—*In the first case*, the marriage must be contracted anew according to the prescribed form, that is, before a qualified priest and two witnesses (Can. 1137).

This is the method to follow in revalidating purely civil marriages.

208:—If the parties exchanged their consent without the presence of a priest, or in the presence of a priest who was not qualified to assist at the mar-

riage, the new contract must be made publicly or secretly, according as the nullity of the marriage is or is not known publicly.¹⁹⁸

In case one of the parties refuses to comply with this formality, he is to be requested to appoint someone as his proxy, or else a *sanatio in radice* is to be secured.

If both parties refuse to present themselves, there is nothing more to be done. The Church refuses to grant a dispensation in such cases.¹⁹⁹

209:—*In the second case*, that is, where there was no consent, or when the consent given by the parties was extorted by fear or violence, or was vitiated by error, etc., it is necessary that, *after the vitiating element of the consent has disappeared*, the party who did not consent shall renew his consent.

Provided that the consent of the other party has persisted, the marriage will be valid (Can. 1136, §1).

When the lack of consent has been entirely internal, without any external manifestation, a new consent that is entirely internal will suffice (Can. 1136, §2).

But the nullity of the consent may have been noticed; words may have been uttered and heard

198:—However, even when the nullity is known to the public, the Ordinary can permit a secret revalidation, provided that it is afterwards publicly revealed.

199:—If the parties are in such circumstances that it is impossible for a month for them to secure the assistance prescribed by the law, it is sufficient if they renew their consent before two witnesses (cf. n.51).

which will suffice to prove that the marriage was not valid. In that case it will be necessary that the parties renew their promises before the Pastor and two witnesses.

If the words or gestures of refusal have not been noticed, the new consent shall be manifested externally, but without any formality (Can. 1136, §3).

210:—*In the third case*, that is, when the marriage is null because of an impediment which has disappeared of itself (v.g., age, abduction, disparity of worship), a new consent is still required to revalidate it. And this consent must be given publicly if the nullity of the marriage is known, or if the first consent was not given according to the required form.

Here a question arises concerning the marriages contracted before May 19, 1918, and null because of an impediment which was afterwards suppressed by the Code (consanguinity in the 4th degree, illicit or licit affinity in the 3d and 4th degree, spiritual relationship resulting from Confirmation, *publica honestas* resulting from betrothals). The Code has not automatically revalidated these marriages. However, there is no reason for asking for a dispensation from an impediment which does not exist any longer. It is enough if the parties, knowing that their consent was null, now renew it. This new consent will be made, publicly, privately, or secretly, according as the impediment was

known to the public, to the parties only, or to but one of the parties.²⁰⁰

ARTICLE II

Revalidation by Means of an Ordinary Dispensation.

211:—The marriage in this case is null because of an impediment from which the Church can dispense.

It is necessary:

1:—to secure a dispensation;

2:—to secure the consent of the parties.

When *both* parties are ignorant of the nullity of their marriage, they should be left in good faith until the dispensation is secured.

If the impediment is known to the public, the parties must be asked to separate *quoad torum et cohabitationem*, until the time comes for the revalidation. But if the impediment is not known except to the two interested parties, it is enough to hold them to separation *quoad torum*.

The situation is more delicate when only one of the parties knows of the nullity; this party cannot, without committing formal fornication, discharge the marriage rights; on the other hand, there may be serious danger in telling the true state of affairs to the other party.

200:—*Example:* A woman accuses herself in confession of relations before her marriage (which was celebrated in 1917), with the brother of her present husband. The husband is ignorant of this sin, which is partially occult. It is sufficient, in this case, to renew without any formalities, the consent of the woman, after telling her of the nullity of her marriage, in order that the marriage may be revalidated.

In such a case the party who knows of the nullity is to be urged, so far as possible, to separate temporarily from the other, or to refrain, under various pretexts, from conjugal relations.

If, in this case, the nullity results from an *occult impediment*, the difficulty in desisting from conjugal relations will be sufficient reason to justify *the Pastor or the Confessor to give the dispensation himself*, and thus revalidate the marriage at once.

212:—Outside of this case of urgency, the Pastor, or the Confessor, will at once send a petition to the Ordinary or to the Penitentiary, in accordance with the customary rules, indicating the date of the marriage, the good or bad faith of the parties, the number of children resulting from the marriage,²⁰¹ the motives of urgency which permit the Ordinary to grant the dispensation.

213:—After the dispensation is secured, a new consent is to be secured from both parties, or at least from the one who knew of the nullity of the marriage. The Church²⁰² demands this new consent *for the validity of the marriage*, even tho the parties have, on the occasion of the first marriage, given a formal consent and have not retracted it (Can. 1133).

201:—When the marriage was concluded in good faith, the children born of it are legitimate. In case of bad faith, they must be legitimized by a special act.

202:—*De jure naturali* the consent given at the time of the first contract and not since revoked is sufficient to insure the validity of the marriage when the impediment no longer exists. The Church requires this new consent in order to distinguish the ordinary dispensation from the *sanatio in radice*.

The same holds true regarding the obligation of notifying the parties (or at least the one who knows of the existence of the impediment) concerning the nullity of the marriage.

It is, moreover, required that this new consent shall not be a simple ratification of the first, and that the parties realize that they are performing an act that is necessary for the revalidation of their marriage (Can. 1134).

214:—*How must this consent be given?*

1:—When the impediment is *public*, both the parties must renew their consent according to the accustomed form,²⁰³ that is, before the Pastor and two witnesses; and mention must be made of this revalidation in the Marriage Register.

2:—When the impediment is occult and known to *both* the partners, it is enough if they renew their consent in private and without formality, altho it would be better to have them do it, if possible, before a priest; for instance, before their common confessor.

3:—Finally, when the impediment is *occult* and known to *only one* of the parties, *only that one* is bound to renew (secretly) his consent.²⁰⁴ Provided that the other party perseveres in the consent

203:—The priest must see that the parties are in the state of grace so that they may receive the graces of the sacrament. He does not bless the ring, but it is more probable that he can give the nuptial blessing the second time.

The Ordinary can, if necessary, give permission to have the marriage in the sacristy or in a private house, and to require nothing but the renewal of the consent *in facie Ecclesiae*.

204:—We may also suppose that the impediment is unknown to both the parties. In this case, if the impediment is *public* (a supposition which is almost impossible) the parties are to be told of it, and their consent is to be renewed publicly. If the impediment is *occult*, it will suffice to notify the one of the parties who knows of it and have him renew his consent. If there is danger or fear of scandal in revealing the nullity of the marriage, it will be prudent to have recourse to a *sanatio in radice*.

which he gave at the time of the first contract, that act will suffice to insure the union of the two consents necessary to create the matrimonial bond (Can. 1135).

The fact that the party who is now aware of the impediment, has continued to live and have conjugal relations with the other, is sufficient to establish the permanence of his consent. Moreover, even his present bad dispositions do not prove that he has retracted his consent, since as a matter of fact he considers such retraction impossible. Therefore, unless there is a grave reason for the contrary, we are justified in presuming that the consent of the ignorant party perseveres.

We have, therefore, the suppression of that obligation of the ecclesiastical law which requires that the ignorant party be informed of the nullity of the marriage and that he give a new consent. Confessors will no longer be put to the necessity of following complicated methods, suggested in the case by theologians and canonists.

It is, moreover, a fact that already these difficulties have grown less numerous, because of the suppression of the impediment of illicit affinity.

ARTICLE III

Revalidation by Means of Sanatio in Radice.

215.—DEFINITION.—A *sanatio in radice* is a dispensation from an impediment of the ecclesiastical law which, without exacting from the parties the renewal of their consent, revalidates their marriage and in addition, by a fiction of law, attributes to it

all the canonical effects of a legitimate union dating back to the moment of its celebration²⁰⁵ (Can. 1138, §1).

It is, so to speak, an act with a two-fold effect. With regard to the parties concerned, it removes the legal obstacle which prevented the union of their consents, and gives to these consents their natural efficacy. From the moment of the concession of the dispensation (*ex nunc*), the marriage is valid by virtue of the consent given in the first instance and virtually persevering.

Moreover, this dispensation suppresses the *juridical* effects of the invalidity of the marriage, and, with regard to the children, it declares that they are to be considered as legitimate, dating back to the celebration of the marriage (*ex tunc*), just as if the dispensation had been granted at that time (Can. 1138, §2).

216:—*The sanatio* means, therefore, a derogation from that law of the Church which requires the renewal of the consent.²⁰⁶ It may be obtained either without the knowledge of both parties, or without the knowledge of only one of them (Can. 1138, §3).

205:—This definition explains the name of the dispensation; the essential part, the root of marriage, is the consent of the parties; but this consent cannot produce its natural effects so long as an impediment prevents it from doing so; on the other hand, when the impediment disappears, the contract is inaugurated by the mere fact of the union of the two consents.

206:—Sometimes the Pontifical rescript demands that the party who knows of the nullity of the marriage shall renew his consent. This clause has for its purpose to make sure of the persistence of the first consent.

217:—CONDITIONS REQUIRED.—The *sanatio* is an extraordinary means to which recourse is to be had only when a simple dispensation is insufficient.²⁰⁷

The Church requires the following conditions:

1:—It is necessary that the impediment from which the nullity of the marriage results, be of the *ecclesiastical law* and that it belong to the category of those from which the Church is accustomed to dispense.²⁰⁸

If the impediment is of the natural or the divine law, it cannot be the subject of a dispensation, and when the impediment disappears, the Church does not revalidate the marriage by a *sanatio in radice*, not even to take effect from the moment when the impediment disappeared (Can. 1139, §2).

A civil marriage concluded by a divorced person while his spouse is still living, cannot, even when the latter dies, be revalidated by a *sanatio*.²⁰⁹

207:—A practical case of *sanatio* is that where the marriage is null, and is known to be null by both parties, but where one of them refuses to renew his consent. To regularize the situation of the well-disposed party, a *sanatio in radice* should be obtained.

The same thing should be done when both parties are ignorant of the nullity of their marriage, and there would be danger in making it known to them.

208:—The Church does not ordinarily dispense from the 1st degree of affinity in the direct line, and hence there is no hope, except in very exceptional cases, that she will revalidate a marriage contracted in spite of that impediment.

209:—Before the publication of the Code, this point was disputed; and I thought myself that I could give a different solution (*Les dispenses matrimoniales*, p.151). Moreover, there are some instances of this relative *sanatio*.

The motive which actuated the legislator is doubtless the following: Concurrently with an impediment of the divine law, a real matrimonial consent is impossible. In the case of an impediment of previous matrimonial bond, for instance, the husband no longer has dom-

2:—It is necessary that the consent given by the parties, altho null on account of the diriment impediment, shall have been a real consent “*maritalis et naturalis*,” tending to establish, so far as it was in their power, a conjugal bond.

If, therefore, both parties did not have the idea of establishing between them a matrimonial bond, a *sanatio* is quite impossible. If one of them gave a real consent, it will be possible to secure a *sanatio* as far as he is concerned; but the other needs must renew his consent.

It may be that the necessary consent was not given in the beginning, but was given afterwards by the parties. In this case, the *sanatio* is possible, but only to take effect from the moment when the consent was given. (Can. 1140, §2).

We have the right to presume that sufficient consent was given, if the parties did not know of the existence of an impediment; or when, even tho they knew of it, they did not realize that it prevented the validity of their marriage.

Moreover, the Code admits that the knowledge of the existence or an impediment, or doubt as to the nullity of the marriage, does not necessarily exclude a genuine consent (Can. 1085).

218:—What are we to think of the application of the *sanatio in radice* to civil marriages?²¹⁰

inion over his own body; therefore, since the object of the matrimonial consent is lacking, the root of the second marriage cannot exist. Of course, when the impediment disappears, the marriage becomes possible; but the Church demands a new consent for that.

210:—The same question arises regarding a mixed marriage cele-

The Code admits it, since it permits the revalidation by this means of marriages that are null because of defect in form (Can. 1139, §1).

As a matter of fact, the Holy See sometimes grants dispensations *in radice* for the revalidation of civil marriages, or marriages contracted before non-Catholic ministers; and that even in countries where, as in France, most people know very well that the presence of the Pastor is indispensable.

It would seem, however, that these concessions suppose in the contracting parties great ignorance or profound lack of instruction. It is hard to see how faithful people who are acquainted with the teaching of the Church concerning marriage, and who know that for a Catholic the contract at the justice's is only a civil ceremony, can, in such a case, give a true matrimonial consent.²¹¹ The dispensation *in radice* cannot revalidate what has been only a consent to live in concubinage²¹².

brated before a non-Catholic minister.

To regularize the situation of the well-disposed Catholic party, when the other party refuses to present himself before a priest, we may have recourse to a dispensation *in radice*. In this case, regularly the required promises must be made by both parties. However, the Holy See *sometimes* accepts the promises that are made by the Catholic party only, provided that there is not, for her or for her children, any danger of perversion. She must previously receive absolution from the excommunication incurred.

211:—The *sanatio* always presupposes that there was in the contracting parties *intentio vere maritalis seu intentio verum matrimonium contrahendi*.

212:—In a petition of this kind, we must prove that the matrimonial consent was really given and that it has not been revoked. Even in this case the Church would not grant the dispensation if the favor would be an occasion of scandal to the faithful and would tend to diminish in the eyes of the public the abhorrence they should have for a purely civil marriage.

It follows from this that this dispensation can be secured only in exceptional cases.

3:—It is necessary, that at the time when the dispensation is granted, the consent of the parties still perseveres and has not been retracted (Can. 1140, §1).

For it is not possible that the contract should be valid in spite of the lack of consent of the parties.

In general, we are always to presume that the consent perseveres (Can. 1093), and this presumption justifies the securing of the fulfilment of a dispensation, unless the rescript demands positive and explicit proof.²¹³

4:—Finally, it is necessary that the cause be a grave one, which will not allow having recourse to an ordinary dispensation.

We may allege as reasons: the fear of a scandal or a divorce if the nullity of the marriage is disclosed to the parties; the impossibility of inducing one of the parties to renew his consent according to the required form; the nullity of a dispensation, resulting from the negligence of the Ordinary, of the pastor, or of the Confessor.²¹⁴

219:—METHOD OF PROCEDURE.—The power to grant the *sanatio in radice* belongs, *de jure proprio et exclusivo*, to the Sovereign Pontiff (Can. 1141).

213:—When the parties are ignorant of the existence of an impediment, the conviction that their marriage is valid is sufficient to remove from their minds any serious desire to break it.

It matters not what they might do if they knew of its nullity; it is sufficient that actually they have not the wish to regain their freedom.

214:—Under the former legislation, when the parties were ignorant of the nullity of their marriage, the Holy See quite often directed that they be left in good faith; now it more readily grants a *sanatio*.

The common law does not accord to Ordinaries, even for exceptional cases; but it may be given to them by indult.²¹⁵

220:—In asking for this dispensation, the ordinary procedure is to be followed, according as it is a question of a public or of an occult impediment.

It is to be plainly stated whether the parties gave a real matrimonial consent, and whether this consent has ever been retracted; and the reasons are to be set forth which make the ordinary form of revalidation impossible.

221:—To this request the Holy See replies, sometimes in *forma gratiosa*. There is no fulmination in this case. The Pastor, on being notified of the granting of the dispensation, records it in the Marriage Register, and notifies the party who has knowledge of the nullity of the marriage, and, as occasion demands, tells him of the penance imposed.

Great care must be taken to preserve the rescript, so that, if necessary, the validity of the marriage and the legitimacy of the children may be proved.²¹⁶

Generally, the dispensation is given in *forma commissoria*; the Ordinary fulminates, and the Pastor proceeds as described above.

In the internal forum, the dispensation is habitually given in *forma commissoria*, and it is the Confessor who is charged with its fulmination. He

215:—The Propaganda grants to Ordinaries in missionary countries the power to revalidate by *sanatio* marriages that are null because of an impediment from which they have the power to dispense.

proceeds as with an ordinary dispensation, slightly modifying the formula "*matrimonium a te nulliter contractum ob impedimentum cum tuo putato conjuge in radice sano et convalido.*"

The dispensation may be given for the non-sacramental internal forum; in this case it is fulminated outside the confessional; the apostolic rescript is to be preserved, and the Chancery is to be notified of the dispensation, together with the names of the parties and the nature of the impediment. As occasion demands, this dispensation produces its effects in the external forum.

216:—When the nullity is known publicly, it is necessary, in order that the scandal may be ended, to make the rehabilitation known. If this revelation might product serious results, the Pastor should take the precaution to admit the parties to the reception of the sacraments, so as not to cause astonishment to the faithful.

Appendix One

Separation of Married People.

It seems well to add certain considerations concerning the various reasons which may bring about the perpetual or temporary separation of husband and wife. They will help to better understand how the teaching of the Church is opposed to the iniquitous law of civil divorce.

ARTICLE I

The Dispensation Super Matrimonio Rato et Non Consummato.

222:—A valid marriage, between baptized persons, after it has been consummated, cannot be dissolved by any human power or by any other cause than by the death of one of the parties. (Can. 1118).

223:—On the other hand, there are two reasons for which a *valid but not consummated* marriage may be dissolved:

(1):—THE SOLEMN RELIGIOUS PROFESSION of one of the parties. This was taught by the Council of Trent.²¹⁷ (Sess. 24, Can. 6). It has been confirmed by the New Code (Can. 1119).

This privilege does not apply to simple profession (even in the Society of Jesus), or to sacred

217:—Alexander III drew the conclusion from this that the party who was thinking of entering religion, had two months allowed him to consider the matter and arrive at a decision. During this period he was not obliged to render the *debitum*. This privilege no longer exists.

orders; it is the solemn profession itself (not merely the entrance into an Order of solemn vows) which dissolves the marriage.

Let us add that the Code forbids, under pain of nullity, the religious profession of all married people (Can. 542, n. 1). True, it is not impossible to secure a dispensation from the Holy See; but in order that the matrimonial bond may be broken and that the party who remains in the world may be empowered to contract a new marriage, it must first be proven, by the customary proofs, that the first marriage was not consummated. Then it will be more easy to secure a dispensation *super rato*.

(2):—A DISPENSATION FROM THE HOLY SEE (Can. 1119).

This means is more simple and deserves special consideration, for requests for this sort of dispensation are becoming more and more numerous.

The Code has made no innovation in this matter; it merely confirms the practice followed by the Church for centuries past.

224:—*Conditions under which the dispensation is granted.* Evidently there must be a grave cause; but causes of private interest are sufficient.

Amongst the chief causes are the following: the abandonment, with or without cause, of one of the parties; impotency which has arisen after the celebration of the marriage; an infirmity which has arisen under the same conditions, and which prevents conjugal relations; grave dissension between the parties; the fact that one of the parties has secured a divorce and has since then contracted a civil

marriage; the prolonged refusal of one of the parties to have conjugal relations, etc.

N. B.:—In certain actions to prove the nullity of the marriage because of impotency, it is difficult to prove that there was really impotency; but it may be easy to prove that the marriage was not consummated. In that case the desired result may be secured by asking for a dispensation *super rato*.

225:—*The method of procedure.*²¹⁸ No one but the two married people has the right to ask for this dispensation. (Can. 1973).

On the other hand, it is enough if one of the parties makes the request; and his request may be granted in spite of the opposition of the other. (Can. 1119).

The Sovereign Pontiff alone can grant this favor; and he reserves the examination of cases of this kind to the Congregation of the Sacraments. (Can. 1962).

The Ordinary cannot even undertake to institute a trial of this kind until he has received special authorization to do so from the Holy See.²¹⁹ (Can. 1963, §1).

218:—The Congregation of the Sacraments published in the 7th of May, 1923, very explicit rules concerning the procedure to be followed in such cases. They are to be found in the *Acta Apost. Sedis*, XV, p.389-436. An Appendix gives all the formulas necessary for the drawing up of the brief.

219:—However, if the Ordinary had begun a suit to prove the nullity of the marriage because of impotency, and if from his inquiry the proof was made evident, not indeed of impotency, but of the non-consummation of the marriage, the records of the trial must be forwarded to the Congregation of the Sacraments, which can use them to decide as to the advisability of a dispensation *super rato*.

226:—Here, then, is the method of procedure:

The two parties, or only one of them, as the case may be, present a petition to the Holy See through the Ordinary, who adds his own opinion, after having made every effort to bring about the reconciliation of the parties. This petition must contain a simple exposition of the facts and the reasons alleged, to secure the dispensation.

The Congregation of the Sacraments then delegates the Ordinary to proceed to the necessary inquiries. The tribunal is composed of a judge, a Defender of the Marriage Bond, and a clerk. All of them take an oath, and all are bound to secrecy.

227:—The judge cannot make the prescribed inquiry without first citing the Defender of the Matrimonial Bond. (Can. 1967).

This inquiry will bear on two points: the value of the reasons alleged to secure the dispensation, and the fact of the non-consummation of the marriage.

The first point ordinarily presents little difficulty. It is more difficult to establish the second.

In some cases, it will be quite easy to prove that the parties did not consummate the marriage, by showing that they were never together from the time of the celebration of the marriage until their separation. This is the surest possible proof when it is possible to secure it.²²⁰

220:—The fact that there had been carnal relations between the parties before their marriage, would not prevent them from obtaining a dispensation.

In other cases, it is necessary to secure the testimony under oath of the parties, corroborated by the testimony of the witnesses who are called "*septimae manus*"²²¹ and, in most cases, to have corporal inspection made by experts. (Can. 1975-1981).

228:—When the inquiry is finished, the judge must not either publish the results or give any judgment as to the fact of non-consummation or as to the value of the motives alleged. He asks the written opinion of the Bishop and of the Defender of the Marriage Bond, and sends them, together with the record of the trial, to the Congregation of the Sacraments. (Can. 1985).

229:—The Congregation then hands down a judgment based upon the information furnished by the Ordinary. The Cardinals give their opinion as to the advisability of a dispensation, in the case, and if their opinion is favorable, the Sovereign Pontiff himself pronounces the dissolution of the matrimonial bond.

230:—It is quite evident that all these proceedings, the summoning and examination of witnesses, the work of the experts, etc., entail expenses; but

221:—This term is applied to the seven witnesses chosen by the husband and the seven witnesses chosen by the wife, whose role is to corroborate the declarations of the parties by testifying concerning their piety and uprightness. They are taken, so far as possible, from amongst the relatives of the contracting parties.

Their number is not absolutely fixed, and it is not forbidden to question them concerning facts relating to the case itself. To their testimony must oftentimes be added that of other ordinary witnesses, as also all the documents, public or private, which can furnish proofs.

the poor can secure reductions in the charges or even the *patrocinium gratuitum*. (Can 1914).

231:—It is at least probable that the marriage of two infidels who are asking for baptism, can be dissolved by the Sovereign Pontiff, provided that it has not been again consummated after their baptism.

The same is true of the marriage of two infidels, one of whom is baptized, even if, after the baptism, the party has had relations with the party who remained an infidel. A marriage of this kind remains *legitimum*; it becomes truly *ratum* only with the baptism of both the parties.

As a matter of fact, there are cases of dispensation of both these kinds; the only marriage that is absolutely indispensable is the marriage of *two baptized persons* after it has been consummated (*ratum et consummatum*.)

ARTICLE II

The Pauline Privilege.

232:—The cases to which this privilege refers are becoming more and more common in this country. Let us briefly review the rules laid down by the Code.

The name of this privilege, which is also called “the privilege of faith,” comes from St. Paul who promulgated it in his first Epistle to the Corinthians (VII, 12-15).

It consists in this, that a marriage which is *legitimate between non-baptized persons*, even

though it has been consummated, can be dissolved in favor of the party who is converted. (Can. 1120, §1).

Baptism is the proof of this conversion; a catechumen does not enjoy the Pauline privilege. Moreover, it is not necessary that the baptism be received in the Catholic Church; it is enough if it is a valid baptism.²²²

But the privilege does not exist when it is a question of a marriage between a baptized person and a non-baptized person, contracted with a dispensation from disparity of worship (Can. 1120, §2), and still less in a case when, of two baptized spouses, one lapses into paganism or infidelity.

Note:—When the marriage of two infidels is null because of an impediment of the natural law, the divine law, or the civil law, there is no occasion for dissolving it; it is merely declared null. But in this case the Church, while taking into account the impediments introduced by the civil power, does not accept civil divorce; she pronounces according to her own legislation on the validity or the nullity of a marriage.

233:—The following are the conditions attached to the Pauline Privilege:

(1) :—It is necessary that the infidel party no longer cohabits with the converted party, or that the cohabitation is a habitual occasion of insult to

222:—If the other party is converted and receives Baptism, it is no longer possible to make use of the privilege of the faith. In such a case it might be possible to secure from the Holy See a dispensation *super rato*, if the marriage had not been consummated after the baptism of the parties.

Almighty God. This would be the case where the infidel party would endeavor to lead the converted party into sins against faith or against conjugal chastity, or to turn him away from the practice of his religion; or where he would be practicing polygamy, or offending God by repeated blasphemies, or where he would insist on bringing up the children in error, or where he would break up the peace of the home by onerous tasks or serious privations imposed on the Christian party because of her faith, etc.

(2)—To make sure of the sentiments of the infidel party, the baptized party must ask him whether he will be converted and receive baptism, or at least whether he will continue to live in common without insulting God and without interfering with the freedom of the Christian party in practicing her religion.²²³

234:—These *interpellations* cannot be omitted without the authorization of the Holy See. (Can. 1121). They are required for the *valid* use of the privilege, for they are the normal means of ascertaining the dispositions of the infidel party. There are many pontifical documents which show their absolute necessity.²²⁴

They are regularly made through the Ordinary of the converted party, in summary and extrajudi-

223:—The marriage cannot be broken if the infidel party assents to both demands, or at least to the second. However, in this second case, it would be permissible for the Christian to separate *quoad habitationem*; but he could not contract another marriage.

224:—The omission of the interpellations, without a regular dispensation, would cause the nullity of the second marriage, even tho the convert were certain that the infidel party would refuse the demands.

cial form,²²⁵ ordinarily after the baptism of the converted party; or even before the baptism, *if the permission of the Holy See has been secured.*

In making these interpellations, the Ordinary may grant to the infidel party if he so demands, a period of time to think the matter over, warning him at the same time that when this period has expired, his silence will be considered as a refusal.

If this manner of procedure is impossible, the interpellations made privately by the converted party will be sufficient; but in this case, it is necessary, for the external forum, to prove by two witnesses or by any other legitimate means, that the interpellations have been made. (Can. 1122).

Dispensation from the necessity of making the interpellations.—The Holy See, as we have said, may dispense the baptized party from making the interpellations, and as a matter of fact dispensations of this kind are not rare. Vicars Apostolic are granted special powers to that effect.

Moreover, the Code (Can. 1125) has extended to the whole world certain facilities which were previously granted only to certain clearly specified countries. Thus, by virtue of these ample general concessions, a polygamist who is converted and who does not remember which one of his wife he married the first, may keep the one he wishes. Even if his memory is clear in the matter, he may still keep,

225:—So far as possible, the interpellations must be made before two witnesses, or in writing. It is necessary that the infidel party should know that the converted spouse has the intention of contracting another marriage which will bring about the dissolution of their marriage, contracted in infidelity.

instead of the first wife, the wife who consents to receive baptism with him.

Another declaration of the Holy See authorizes Ordinaries and Pastors to dispense the converted parties from the regular interpellations, or to permit the converted party not to wait for the reply of the infidel party before marrying, when an inquiry that is summary and without judicial form proves that the infidel party cannot be reached, or that he has not given his reply within the specified time.

Besides these general concessions, the Holy See grants special indults.²²⁶ In order to dispense from the interpellations, however, a cause is required; such as their uselessness because the bad dispositions of the infidel party are certain, or the impossibility of reaching the infidel party, or his refusal to reply to a previous interpellation, or the fear of grave danger to the baptized party, or finally, a special permission from the Holy See.—In doubtful cases we may follow the interpretation that is favorable to the baptized party (Can. 1127).

235:—When the Holy See has given permission to omit making the interpellations, or when the infidel party refuses to consent to the demands of the

226:—The "powers" given by the Propaganda, and which Vicars-Apostolic can subdelegate to their missionaries, permit dispensing from the necessity of making the interpellations if a summary trial shows the impossibility or the uselessness of making them, or if the inquiry gives reason to fear grave danger (either spiritual or temporal) for the baptized party or even for the Christians belonging to the mission.

These powers also permit, for a grave reason, the making of the interpellations before the baptism.

baptized party, the latter has the right to contract a new marriage *with a Catholic*. But this is not so if it is the baptized party who, after his baptism, has by his conduct (v.g., by adultery or harsh treatment) given his spouse a legitimate reason to break off their common life (Can. 1123).

In order to contract a new marriage with an infidel, or even with a baptized non-Catholic, the Catholic party must have a quite special dispensation from the Holy See, for this marriage is permitted only *in favorem fidei*.

236:—The party baptized retains the right to make use of the Pauline Privilege, even if, after his baptism, he has continued to have conjugal relations; but only in the case where his spouse, remaining in infidelity and forgetting her promises, would without reason break off their common life, or would become for him the occasion of sin (Can. 1124).

237:—From the explanations given above it follows, therefore, and it is, moreover, the explicit decision of the Church, that the marriage that is contracted in infidelity is not broken at the moment when one of the parties is baptized, but only at the moment when that party contracts a new marriage (Can. 1126). Consequently the converted party cannot, without a dispensation from the Holy See, enter religion or receive sacred orders.

It is needless to add that the infidel party, whether he becomes converted or remains in paganism, has the right to contract another marriage.

Note:—The ample concessions which we have just discussed (n. 234) show that the Church some-

times authorizes a second marriage of the converted party, even when the infidel party does not refuse to cohabit peacefully with the converted party. And Gregory XIII declared that such marriages are valid, even though it were afterwards discovered that at the time of their celebration the party who was considered as an infidel had likewise received baptism. It is plain, therefore, that the first marriage was dissolved. We cannot say that this was in virtue of the Pauline Privilege, since not all the conditions of this privilege (the refusal of the infidel party, and the interpellations) were realized. We must, therefore, admit that this first marriage was dissolved by the Sovereign Pontiff, by virtue of the power spoken of above (n. 231). Acting as the minister of God, the Pope can dissolve a *legitimate* marriage, even when it has been consummated, when one of the parties is converted.

ARTICLE III

*The Separation of the Body*²²⁷

238:—There is a grave obligation for the married couple to live together, unless for a legitimate cause (Can. 1128).

All the causes of separation result from the impossibility or the unwillingness of one of the parties to have conjugal relations with the other.

Amongst these reasons, some authorize perpetual separation, others only a temporary separation.

227:—When it has become impossible to live together, the parties, who may be tempted to apply for a divorce, are to be reminded that mere separation can give them, from the civil point of view, the same advantages, and that it safeguards the demands of Catholic teaching.

239:—The *chief cause* of perpetual separation results from the adultery²²⁸ of one of the parties. Nevertheless the innocent party cannot make use of it if he has consented to the crime, or has been the cause of it, or has condoned it explicitly or tacitly, or, finally, if he himself has been guilty of the same sin.

We may consider in the light of tacit condonation, the continuance of conjugal relations after learning of the sin, or the refraining from expelling the guilty party from the home, or the neglect to lodge a complaint with the ecclesiastical judge within six months after the adultery (Can. 1129).

240:—After separation because of adultery, the innocent party is not bound ever to take back the guilty party and resume their common life. He has the right, however, to receive the guilty party, or even to summon the guilty party back, unless he has already allowed the guilty party to embrace a state of life that is incompatible with marriage, for example, the religious life (Can. 1130).

241:—*Amongst the other causes of separation* which permit the injured party to have recourse to the Ordinary to obtain a separation, or even to leave the offending party of his own authority, if the reasons are evident and there is danger in waiting for a decision from the Ordinary, the Code mentions the following:

228:—*Adulterium debet esse formale, culpabile, consummatum, moraliter certum.*

The law is the same for husband and wife.—Charity, however, may make it the duty of the innocent party to forgive the sinner, especially if the sin is occult, and if there are children.

The affiliation of the other party with a non-Catholic sect;

His criminal and shameful conduct (habitual drunkenness, adulterous actions, theft,);

The education of the children in schism or heresy;

Grave peril of soul or body (impotency, serious sins against the rights of the innocent spouse, a contagious disease);

Harsh treatment which makes the common life too difficult (hard work, continual bickering, compelling the innocent party to remain shut up in the house, refusing to furnish the necessities of life, etc.)

In all these cases, the separation is only temporary, and must cease with the cause which justifies it.

But when the separation has been pronounced by the ecclesiastical judge, the innocent party cannot be compelled to resume the common life except by a decision of the Ordinary, or by the expiration of the time which was specified for the separation. (Can. 1131).

242:—In case of separation, the education of the children must be entrusted to the innocent party, or to the Catholic party if the other party is not Catholic. If, however, the welfare of the children demands it, the Ordinary may impose another solution, provided that it safeguards the Catholic education of the children (Can. 1132).

Note:—The proper method of procedure is as follows:

The married couple state their grievances to their Pastor; if the subject of their disagreement is an adultery which is certain, the Pastor can declare that there is a cause for separation. If another motive is in question, the affair should be submitted to the Ordinary, unless there is grave danger in awaiting his decision.

Since, in this country, the decision of the Ordinary has no effect in the civil forum, the Church permits the securing of a separation from the civil courts, when there are serious causes for it and when the judgment allows only a separation properly so called.

ARTICLE IV

Trials Concerning the Nullity of a Marriage.

243:—The full discussion of this question alone would fill a volume. We shall limit ourselves to giving some practical suggestions on the method of procedure.

244:—The Code recommends avoiding as much as possible trials of this kind. When a marriage is null because of lack of consent, lack of form, or an impediment, the Pastor and the judge should do their best to induce the parties to give a new consent, or to renew it under the regular circumstances; or else they should ask for the necessary dispensation (Can. 1965).

But in certain cases a trial may be the only means of regularizing the status of the parties or of putting an end to a scandal.

This trial will have for its purpose, not to sever the conjugal bond, but to declare that this bond has never existed, because of a diriment impediment antecedent to the marriage.

245:—THE COMPETENT JUDGE IN THE CASE.—The Church alone can judge in cases which concern the validity of the bond established by marriage between baptized persons (Can. 1960).

The competent judge in cases of this kind, is the Ordinary of the place where the marriage was celebrated, or the Ordinary of the place where the party who is not bringing the action has his domicile or quasi-domicile. When one of the parties is not a Catholic, it is always in the diocese of the Catholic party that the trial is to be held (Can. 1964).

However, the trial may always be taken directly to the Sovereign Pontiff. He usually hands it over to the Rota.

246:—Trials of nullity of marriages are reserved to a tribunal composed of three judges (Can. 1576, §1).

This tribunal acts "*collegialiter*", and the sentence must be in according with the majority of the votes (Can. 1577, §1).

247:—THE METHOD OF PROCEDURE.—Every trial supposes an accusation, or a regular petition presented to the ecclesiastical tribunal (Can. 1970).

This petition is made in the form of a letter setting forth the object of the petition and the summary indication of the proofs (see n. 269).

It may be drawn up by a lawyer, selected by the parties and accepted by the Ordinary.

248:—For all cases concerning nullity of marriages, the parties have the right to introduce an accusation.

The Promoter of Justice has the same right when it is a question of public impediments.

Any other person has only the right to denounce the nullity of public impediments.

Any other person has only the right to denounce the nullity of the marriage to the Ordinary or to the Promoter (Can. 1971).

249:—*The proofs* vary according to the nature of the case. They result from the depositions of the witnesses chosen by the parties, by the Defender of the Marriage Bond, by the judges; and from the production of authentic documents, from the bodily examination, in a word, from all that can serve to establish the existence of a diriment impediment *at the time of the celebration of the marriage*.

250:—In these cases the part of the Defender of the Marriage Bond is quite important. His mission is to plead orally or in writing for the validity of the marriage, to watch over the regularity of the matrimonial procedure, to demand, if he sees fit, supplementary proofs, to take an appeal from the decision when the law demands it (Can. 1968-1969).

251:—After the arguments are made, and when the Defender of the Marriage Bond has declared that he has no further claim to make, the tribunal gives its decision publicly (Can. 1984, §2).

If this decision proclaims the nullity of the marriage, the Defender of the Marriage Bond, except in cases mentioned hereafter, must take an appeal to the higher court.²²⁹ After a like decision has been given by this court, if the Defender of the Marriage Bond thinks that there is no ground for taking another appeal, the parties may, ten days after the end of the trial, contract a new marriage (Can. 1986-1987).

If, however, the nullity of the marriage resulted from the impotency of one of the parties, this party would not have the right to contract a new marriage; or at least he could not do so until he had received the authorization of the Holy See.

252:—SIMPLIFIED METHOD OF PROCEDURE.—In certain cases, the solemn method of procedure is not required. This would be the case when the marriage is null because of one of the following impediments, disparity of worship, sacred orders, solemn vow of chastity, previous marriage bond, consanguinity, affinity, or spiritual relationship.

If, in these different cases, an authentic document of absolute certainty proves the existence of the impediment, and if there is the same certainty that no dispensation has been given for that impedi-

229:—If the case is tried before the Ordinary, the appeal is taken to the tribunal of the Metropolitan. If the case is tried in the first instance before the Metropolitan, the appeal is taken to the tribunal of an Ordinary designated once for all by the Metropolitan with the approval of the Holy See (Can. 1594, No. 1 and 2).

Very often, however, the appeal is taken to the Holy See; and in that case it is the tribunal of the Rota which sits in judgment on the appealed case.

ment, it is enough if the Ordinary cites the parties and gives a decision declaring that the marriage is null.

253:—However, even in a case of this kind, the intervention of the Defender of the Marriage Bond is obligatory. If he judges that the proofs furnished to prove the impediment are insufficient, or that there still remains a doubt as to whether the dispensation was granted, he must take an appeal from this decision.

The appeal is to be considered in the same manner by the higher court. This court may decide whether the first sentence is to be affirmed, or whether the case is to be referred back to the lower court to be tried over again, this time with the customary solemnities²³⁰ (Can. 1990-1992).

230:—When a Catholic, who has secured a divorce from a purely civil first marriage, wishes to contract a new marriage before the Church,—or wishes to revalidate before the Church a second civil marriage,—it is not necessary to institute a trial before the Diocesan Court. This case may be settled by the Ordinary, without the intervention of the Defender of the Marriage Bond,—or even by the Pastor after consultation with the Ordinary,—after first making due inquiry concerning the celebration of the first marriage, and establishing the fact that the required form was not observed.

The same procedure must be followed in the case where a Catholic, after having contracted marriage with a non-Catholic in violation of the laws of the Church, in a Protestant church, and after having secured a divorce from this marriage, wishes to contract a second marriage with a Catholic according to the rites of the Church. (*Acta Ap. Sedis*, Oct. 16, 1919).

Appendix Two

FORMULARY.

254:—Certificate of the Publication of the Banns²³¹

I, the undersigned, Pastor of N., hereby certify that the banns for the marriage of N. N. and N. N. have been published times in my parish, and that no impediment has been discovered.

(Place)

(Signature)

(Date)

(Parish Seal).

255:—Form of Authorization.²³²

I, the undersigned, Pastor of N., hereby grant to the Rev. N. N., Pastor of N., the necessary authorization to receive the consent of N. N. and N. N. in marriage.

(Place)

(Signature)

(Date)

(Parish Seal).

231:—For all the following formulas, there is no obligatory model. It is sufficient that they be clear, explicit, and complete.

232:—This authorization is necessary (*ad liceitatem*) for the Pastor who officiates, within his parish, at the marriage of people who are not his parishioners. It is given by the Pastor of one of the contracting parties (as a general rule, by the Pastor of the place where the bride has her domicile).

256:—Form of Delegation.²³³

I, the undersigned, Pastor of N., hereby grant to the Rev. N. N., of the diocese of N., the necessary delegation to assist at the marriage of N. and N., which according to the law should be celebrated in my parish.

The banns have been published three times, and to the best of my knowledge, there is nothing to prevent the celebration of this marriage.

(Place)

(Signature)

(Date)

(Parish Seal).

257:—Certificate of Confession.

Ego, infrascriptus, parochus (or vicarius) Ecclesiae v. d. sacramentaliter audiui N. N. in ordine ad matrimonium contrahendum.

..... die mensis anni.....

(Signature)

(There is no reason why this form may not be written in English.)

233:—This delegation (or that of the Ordinary) is required for the *validity* of the marriage, when the officiating priest is not the Pastor (or a Vicar possessing a general delegation) of the parish where the marriage is celebrated.—It can be given *viva voce*.

258:—Petition for a Dispensation from a Public Impediment.

Your Grace:

N. N., born in on the,
and having a domicile at this time in the parish of.....,
and N. N., born in on the....., and having
a domicile at this time in the parish of.....,
humbly beg Your Grace to obtain for them from the Sov-
ereign Pontiff a dispensation from the impediment of.....

(If there are several impediments, be sure to name them).

Following is the genealogical tree which shows this im-
pediment. *(Give, if possible, the names and surnames of the
ascendants.)*

The following are the reasons for the petition:

1:-

2:-

*(Give more than one, beginning with the most important
ones).*

The present financial condition of the petitioners is.....

.....
Their prospective financial status is.....

They offer, therefore, as a fee, the sum of \$..... fixed
by the diocesan tariff.

The correctness of this data is attested by N.
and N. 234

Your Grace's obedient servant,

.....
*(If there are children already born or about to be born,
their legitimization must also be asked for).*

234:—If the marriage is set for a date that is very near at hand,
and if it cannot well be postponed, the motives of urgency must be
stated so that the Ordinary can grant the dispensation; "This impedi-
ment has just been made known to me by the mother of the peti-
tioner. The marriage is arranged for the . . . , the invitations are
already printed, and it seems impossible *(state just why)* to ask
the contracting parties to postpone the ceremony. I beseech Your
Grace, therefore, to grant the necessary dispensation by virtue of
the powers accorded you by Canon 1045."

259:—Petition for a Dispensation from an Impediment of Mixed Religion or Disparity of Worship.

Your Grace:

N. N. (*name and surname of the Catholic party*), born in on the, having at this time a domicile in the parish of N., humbly begs Your Grace to secure for him (her) from the Sovereign Pontiff a dispensation from the impediment of, in order that he (she) may marry N. N., a non-Catholic, who has a domicile in

The reasons are (*see n. 88*).

Both the parties have given in writing the promises prescribed by the Church, and I feel morally certain that these promises will be kept.

The petitioner knows that he (she) must do all that he (she) can to convert his (her) future wife (husband); and both of the parties have explicitly promised not to present themselves before a Protestant minister.

I enclose the written promises of both parties. The petitioner is in comfortable circumstances (or, the petitioner is poor and can offer only to cover the expenses of the chancery office).

Your Grace's obedient servant,

260:—Promises to be Signed by the Catholic Party.

I, the undersigned, N. N., promise (under oath) to baptize and bring up in the Catholic faith all the children of either sex that may be born of my marriage with N. N.; and I further promise that I shall not present myself before a Protestant minister either before or after my marriage.²³⁵

In testimony of which, I sign this with my own hand.
(Place)
(Signature)
(Date)

²³⁵—If the Catholic party is well disposed, we may also ask her to sign a pledge to labor for the conversion of her husband.

261:—Promises to be Signed by the non-Catholic Party.

I, the undersigned, belonging to the Protestant faith, promise to allow all the children of either sex that may be born of my marriage with N. N. to be baptized and brought up in the Catholic religion; and I further promise to give to them and to my future wife the most complete liberty in the practice of their religion; and I finally promise not to present myself before a Protestant minister either before or after my marriage²³⁶.

In testimony of which, I sign this with my own hand.

(Place)

(Signature)

(It is well to have these promises signed in duplicate, and to give one copy to the married couple).

262:—Petition for a Dispensation from an Occult Impediment.²³⁷

1:—For the impediment of Reserved Vows.²³⁸

Eminentissime Domine:

Tribus abhinc annis, Maria votum perpetuae castitatis emisit.

Nunc autem se omnino imparem sentit ad hanc obligationem servandam, et dispensationem humiliter petit ut matrimonium inire et debitum conjugale reddere ac petere valet.

Testor oraticem esse pauperem.

236:—This third promise is not required by the Code as a condition stipulated by the Church for the granting of the dispensation; and it is not necessary that it should be given in writing by the parties; but it contains an obligation which they must know and observe.

237:—These petitions can also be written in French. However, when the confessor writes directly to the Penitentiary, it is better to draw up the petition in Latin. The letter is addressed to His Eminence the Cardinal Grand Penitentiary, Palazzo di S. Uffizio, Roma, Italy.

238:—The vow of perfect chastity is reserved to the Holy See only when it is taken in an absolute manner (unconditionally) and after reaching the age of eighteen.—In like manner the Ordinary can dispense from the vows of celibacy, virginity, the vow to receive sacred orders, the vow to enter an institute with simple vows, and the vow of imperfect or temporary chastity.

2:-For the impediment of Crime.

Eminentissime Domine:

Titius ducere intendit Caiam. Sed obstat impedimentum ortum ex eo quod Titius, dum vivebat ejus uxor Maria, copulam habuit cum Caia, et ei promisit matrimonium. (Or, ortum ex eo quod Titius, dum vivebat ejus exor Maria, copulam habuit cum Caia et mortem Mariae effectu secuto machinatus est.) (Or, ortum ex eo quod Titius et Caia mortem Mariae, uxoris Titii, effectu secuto, machinati sunt).

Impedimentum omnino est occultum.

Causae allatae ad obtinendam dispensationem sunt; infamia vitanda et proles a Caia concepta (or other reasons²³⁹).

Unde humillime Eminentiam Vestram supplicant ut eos absolvere et dispensationem super hoc impedimento benigne concedere dignetur²⁴⁰.

Eminentiae Vestrae humillimus et obsequentissimus famulus,

N. N....., confessarius.

(Confessor's complete address to be given in English).

239:—If it is a question of an urgent case, recourse is had to the Ordinary, adding, after the exposition of the various motives, "*Omnia sunt parata ad nuptias; nec matrimonium absque gravis mali periculo differi potest usque dum ab Apostolica Sede obtineri possit dispensatio. Dignetur ergo Dominatio Vestra, vi Canonis 1045, dispensare super hoc impedimento.*"

Finally, if recourse to the Ordinary is impossible, either because of lack of time, or because of the danger of betraying the secret of the confessional, or again if this recourse is possible only by telegraph or telephone, the Confessor can himself give the dispensation from this occult impediment (n.265).

240:—It may happen that this occult impediment (whatever its nature may be) is discovered after the parties have already secured a dispensation for the external forum. This dispensation is null because it contains the mention of only one impediment. Recourse must then be had to the Penitentiary (or to the Ordinary in urgent cases), and request be made for *both* the dispensation from the occult impediment and for the revalidation of the first dispensation. (*For the fulmination of this dispensation, see n.204, note.*)

But in certain cases, there may be danger of violating the sacramental secret. In such a case permission should be asked of the parties before proceeding further; another way would be to ask for the second dispensation from an Ordinary other than the one who

263:—Fulmination of a Dispensation in the Internal Forum.—The Confessor selected by the interested party or designated by the Apostolic rescript, makes certain that the contents of the rescript are correct, imposes the prescribed penance, absolves the penitent from the penalties and censures involved, and finally fulminates *viva voce* the dispensation by means of the following or an equivalent formula.

Dominus noster Jesus Christus te absolvat, et ego, auctoritate ipsius, te absolvo ab omni vinculo excommunicationis et interdicti, speciali modo a poenis et censuris quas ob excessus admissos forsitan incurristi, in quantum possum et tu indiges.

Insuper Auctoritate Apostolica mihi specialiter delegata dispenso tecum super impedimento (v.g., criminis ex adulterio cum promissione matrimonii) ut, eo non obstante, cum muliere quam ducere intendis, matrimonium rite contrahere et in eo licite munere valeas. (Eadem auctoritate prolem susceptam legitimam declaro.) In nomine Patris et Filii et Spiritus Sancti. Amen.

Most authors hold that this dispensation is fulminated after the sacramental absolution. A. de Smet (n. 886) would have it precede²⁴¹ the sacramental absolution.

The rescript of the Penitentiary must be destroyed as soon as possible.

granted the first, for example to have recourse directly to the Bishop, when it is the Vicar General who gave the first dispensation. Finally, if all these means are impossible, the parties may be left in good faith, the marriage may be celebrated, and afterwards a dispensation *in radice* should be secured at least *ad cautelam*. (We say "at least *ad cautelam*," because it may be argued that in such a case as this, the ecclesiastical law ceases to bind). This is one form of the "case perplex"; but it occurs very seldom.

241:—If it is a question of a dispensation for the *non-sacramental* internal forum, the priest fulminates the dispensation outside of the confessional, *viva voce* or in writing. Then he notifies the Chancery of the dispensation, giving the real names of the parties; this notification is kept in the secret archives of the Chancery.

264:—Concession by a simple priest of a Dispensation in the External Forum for a Marriage *In Extremis*.

By virtue of the powers given to the Pastor by the *Codex Juris* (Can. 1044), in cases where one of the contracting parties is in danger of death,

And in consideration of the fact that N. N. is suffering from a disease whose gravity and advanced stage do not permit us to take the time to have recourse to the Ordinary of the diocese,

After having secured in the presence of witnesses the rep-
aration of the scandal given by the conduct of the contracting parties,

And wishing to tranquilize the conscience of the dying person and effect the legitimization of their children,

I, the undersigned, Pastor of N., do absolve N. N., and N. N., who are my parishioners (or, who have their domicile at X..... but are at the present time within the limits of my parish), from all the censures and ecclesiastical penalties that they may have incurred, but only in order that they may enjoy the favor mentioned below; and, by virtue of the same powers, I hereby grant them a dispensation from the impediment of..... so that they may contract marriage according to the laws of the Church. At the same time I declare legitimate the children that have been born of their sinful union. As penance, I impose on the sick person the obligation of fervently reciting the Act of Contrition once, and on the well person the same prayer once a day for six months.

(Place) 242

(Date)

(Signature)

242:—This dispensation is regularly given in writing. In urgent cases, the priest may give it *viva voce*, then write it out and send the text of the dispensation to the Chancery Office.

265:—Concession by the Confessor of a Dispensation in the Internal Forum for Marriages *In Extremis* and for Urgent Cases.

After²⁴³ reciting the ordinary form of absolution, the Confessor adds:

Insuper auctoritate mihi a Codice Juris concessa, dispenseo tecum super impedimento....., ut matrimonium contrahere et in eo licite manere valeas. Eadem auctoritate prolem susceptam et suscipiendam exinde legitimam fore nuntio et declaro. In nomine Patris et Filii, et Spiritus Sancti. Amen.

(If the Confessor is taken unawares, he may use any form which mentions the impediment, the power which the Code gives him, and the exact nature of the dispensation).

266:—Petition for the Revalidation of a Marriage.

(1) :—*For a Public Impediment.*

Your Grace:

N. N., born in on the,
and N. N., born in on the.....,
both having a domicile in the parish of N., contracted marriage without having secured a dispensation from the impediment of.....

From this marriage children have been born.

The parties were in good faith and did not know of the existence of this impediment. Therefore I beg Your Grace to secure for them from the Sovereign Pontiff the necessary dispensation so that they may validly renew their consent before me and two witnesses.

The reasons are: the legitimization of the children, the fear of scandal, etc. . .

(Or; the parties know of the existence of this impediment, but it is not possible for them to separate, even for a short time. Therefore they beseech Your Grace to make use

243:—Or *before*, according to some authors (De Smet, n.886).

of your powers for urgent cases, and grant them the dispensation necessary in order that they may revalidate their marriage).

(See n. 214 for the rules regarding the renewal of consent.)

(2) :—For an Occult Impediment.

Eminentissime Domine:

Titius et Titia, dum viveret uxor Titii, se carnaliter cognoverunt fidemque dederunt de matrimonio inter se contrahendo (quinimo intuitu matrimonii mortem intulerunt uxori Titii, effectu secuto). Post mortem uxoris revera praeſati oratores matrimonium bona (or, mala) fide in facie Ecclesiae contraxerunt ac deinde consummarunt.

Nunc autem nullitatem hujus matrimonii didicerunt.

Quare, de hoc crimine, quod occultum manet nec manifestandum timetur, vehementer dolentes, Eminentiam Vestram rogant ut cum ipsis super hoc impedimento criminis dispensare dignetur, ut matrimonium sic nulliter initum convalidari valeat.

Causae sunt: gravissima scandala vitanda, periculum concubinatus, etc.

Eminentiae Vestrae humillimus et obsequentissimus famulus.

N., confessorius²⁴⁴.

267:—Petition for a *Sanatio in Radice*.

Your Grace:

N. N., and N. N., my parishioners, were married in good faith on

From this marriage children have been born.

Now this marriage is null because of an impedi-

244:—In an urgent case the petition should be sent to the Ordinary. And if this is impossible, the Confessor can himself give the dispensation (n.265), after having imposed a suitable penance. (*For the renewal of the consent, see n.412*).

When both the parties know of the nullity of their marriage, and one of them refuses to renew his consent, a dispensation *in radice* must be secured in favor of the other.

ment of (affinity in the 2d degree in the collateral line), which was discovered only after the celebration of the marriage.

The parties gave a real consent to the marriage, and there is no reason to think that it has since been retracted.

They are ignorant of the nullity of the marriage, and there would be grave danger (*state just what the danger is*) in telling them of the true state of affairs.

Therefore I beg Your Grace to secure for them from the Sovereign Pontiff a "*sanatio in radice*."

(*Or*: They know of the nullity of their marriage, but the man will not in any fashion renew his consent according to the required form, altho he has no intention of breaking off the marriage. Therefore, being desirous of regularizing her situation and of insuring the legitimization of the children, the woman humbly beseeches Your Grace to obtain for them a dispensation "*in radice*".)

268:—Petition for a Dispensation for a Non-Consummated Marriage.²⁴⁵

Most Holy Father:

I, the undersigned, N. N., have the honor to set before Your Holiness the following facts:

I was married on in the church of to N. N.

This marriage has never been consummated.

The reason for this is: an infirmity (*state just what it is*) from which I suffer (*or*, from which my wife suffers), and which prevents conjugal relations. (*Or*, we have never lived together since the celebration of the marriage). (*Or any other reason.*)

Living together soon became impossible; my wife instituted a suit for divorce, and the divorce has been granted.

In order to regularize my situation, I humbly beseech Your Holiness to grant me the necessary dispensation.

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The reasons which impel me to make this request are: the impossibility of a reconciliation with my wife; the probable nullity of the marriage (*because of impotency or fear*); the danger there is for me in remaining in this situation.

I am ready to furnish all the necessary proofs, and I request that the inquiry be entrusted to the Ordinary of the diocese of

(Place)

(Signature)

(Date)

245:—The following is the formula given by the Congregation of the Sacraments (A.A.S., XV, p. 414):

Beatissime Pater:

*N. N., filia....., e diocesi....., annos nata , conditione , domicilium habens in civitate , sub paroecia , ad pedes Sanctitatis Vestrae humiliter pro-
voluta, quae sequuntur exponit:*

Die....., mense....., anno....., oratrix, tunc annum agens....., premissis denuntiationibus a jure statutis ac ritu civili, matrimonium, in paroeciali ecclesia....., cum N N....., filio....., e diocesi....., et civitate....., tunc annorum , professione....., rite contraxit.

*Sed hoc matrimonium, contra oratricis ingenium, ad exitum per-
ductum fuerat ab ejus matre, quae omnem movit lapidem ut filiae
animum sibi conciliaret; et cum nullum ab ejusmodi nuptiis daretur
effugium, oratrix ad matrimonium celebrandum accessit, sperans fore
ut sensim sine sensu amor erga virum enaceretur.*

*At spem fefellit eventus, nam conjugali consortio vix instituto,
vir pravam indolem pandidit, ideoque defectus amoris in aversionem
prorupit. Quapropter quindecim ab inito matrimonio diebus elapsis,
vir, oratrice relicta, ad paternam domum remeavit; postero autem
die, ipsa, urgente matre, virum assequi debuit; cum quo tamen vix
quinque diebus transactis ad matrem reversa est, malens potius mori
quam cum eo intolerabilem viam ducere.*

*Tunc ex hoc capite vir separationem a civili tribunali petiit
atque obtinuit. Oratrix vero, apprimè sibi conscia de non secula
matrimonii consummatione, tum ob perversam viri voluntatem, tum
ob defectum amoris, imò aversionem ipsius oratricis, ad pedes
Sanctitatis Vestrae confugit, Apostolicam dispensationem super
matrimonio rato et non consummato misericorditer implorans.*

*Rationes autem ad petendam dispensationem sunt: 1—invincibilis
oratricis aversio erga virum, absque ulla spe reconciliationis; 2:—in-
continentiae periculum, attenta ejus juvenili aetate; 3:—desiderium
transeundi ad alias nuptias, eidem nuper oblatas.*

Et Deus, etc.,

N. N.....

Datum.....die.....Mensis.....anno.....

(Note continued on page 200)

269:—To File a Complaint for a Suit to have a Marriage declared Null.²⁴⁶

Your Grace:

I, the undersigned, N. N., having my domicile in N., have the honor to set before Your Grace the following facts:

I was married to N. N. on at

This marriage is null because we never asked for a dispensation from the impediment of which exists between us (*or*, I was not free in giving my consent to the marriage; I was forced into the marriage by my father), (*state the nature of this violence*).

The marriage has not been happy; it has resulted first of all in divorce, and then in the second civil marriage of my husband.

In order to regularize our situation, I beseech Your Grace to order a trial which will enable me to obtain a declaration of the nullity of this marriage.

Your humble and obedient servant,

(Signature)

(Place)

(Date)

The petition, signed if possible by the interested party, is forwarded to the Ordinary. He writes to the Pastor and directs him to see whether it is possible to bring about a reconcilliation between the parties, and to inform the Ordinary if the allegations of the petition are true. After this, he forwards the petition to the Congregation of the Sacraments, joining to it his own recommendations.

246:—Before making a request of this or the preceding kind, the lay person should take care to consult a competent priest and ask him whether he thinks that a declaration of nullity, or a dispensation on account of non-consummation, is possible and probable.

Appendix Three

Quinquennial Faculties Given to the Bishops of the United States.

(Sections which refer to the Sacrament of Matrimony).

SACRA CONGREGATIO CONSISTORIALIS.

Index Facultatum Quinquennialium.
Formula IV.

Revmo. Ordinario S. Pauli de Minnesota,
pro III^o Quinquennio.
Juxta Normam Traditam in Can. 340 Codicis Juris Canonici,
Quinquennia supputanda sunt ab anno 1911.

SSmus D. N. Pius XI his S. Congregationis Consistorialis literis benigne indulget, ut Rmus Augustinus Dowling, Ordinarius diocesis S. Pauli de Minnesota, a subsignata die ad integrum annum 1929 quo de jure exhibenda est relatio diocesana ab Ordinariis istius regionis, uti possit facultatibus quas in hoc indice continentur.

Datam Romae, ex aedibus S. Congregationis Consistorialis,
die 30 Januarii, 1924.

C. CARD. DE LAI,
Secret.
H. T. CICOGNANI,

EX S. CONGREGATIONE S. OFFICII:

3:-Dispensandi, justis gravibusque accedentibus causis, cum subditis etiam extra territorium aut non subditis intra limites proprii territorii, super impedimento mixtae religionis, et etiam super disparitate cultus, ad cautelam, quoties prudens dubium oriatur de collatione baptismi partis acatholicae, quatenus ante nuptias pars acatholica ad veram religionem adduci aut catholica ab ipsis nuptiis absterreri nequiverit, dummodo prius regulariter ad praescriptum Cod. I. C. can., 1061, §2, cautum omnino sit conditionibus ab Ecclesia requisitis, et Ipse Ordinarius moraliter certus sit easdem impletum iri scilicet: ex parte nupturientis acatholici de amovendo a parte catholica perversionis periculo, et ab utroque contrahente de universa prole utriusque sexus in catholicae religionis sanctitate omnino baptizanda et educanda; declarata insuper parti catholicae obligatione, qua tenetur, prudenter curandi conversionem conjugis ad fidem catholicam.

Nupturientes autem moneantur se, ante vel post matrimonium coram Ecclesia initum, ministrum quoque acatholicum ad matrimonialem consensum praestandum vel renovandum adire non posse, ad mentem Cod. I. C. can 1063, §1, sub poena excommunicationis latae sententiæ Ordinario reservatae, a parte catholica incurrendae, juxta can. 2319, §1, n.l, stricte caeteroquin servatis quae de parochi in casu agendi ratione statuta sunt in can. 1063, §2.

Quod si partes actu in concubinato vivant, provideatur opportunis modis ut scandalum, si adsit, removeatur et pars catholica ad gratiam Dei recipiendam rite disponatur, praevia ejus absolutione ab excommunicatione contracta, si forte matrimonium attentatum fuerit coram ministro acatholico, cique impositis congruis poenitentiis salutaribus.

4:—Dispensandi justis gravibusque accedentibus causis cum subditis etiam extra territorium, aut non subditis intra limites proprii territorii super impedimento disparitatis cultus (excepto tamen casu matrimonii cum parte Judaica aut Mahometana); quatenus sine contumelia Creatoris id fieri possit et ante nuptias pars non baptizata ad veram religionem adduci aut catholica ab ipsis nuptiis absterreri nequiverit, dummodo prius regulariter ad praescriptum Cod I. C. can. 1061, §2, cautum omnino sit conditionibus ab Ecclesia requisitis, et

Ipse Ordinarius moraliter certus sit easdem impletum iri, scilicet: ex parte nupturientis non baptizati de amovendo a parte catholica perversionis periculo, et ab utroque contrahente de universa prole utriusque sexus in catholicae religionis sanctitate omnino batizanda et educanda; declarata insuper parti catholicae obligatione, qua tenetur, prudenter orandi conversionem conjugis ad fidem catholicam.

Nupturientes autem moneantur se, ante vel post, matrimonium coram Ecclesia initum, ministrum quoque falsi cultus ad matrimoniale consensum praestandum vel renovandum adire non posse, ad mentem Cod. I. C. can. 1063, §2; caeteroquin servatis quae de parochi agendi ratione in casu statuta sunt in can. 1063, §2. Quod vero attinet ad legitimationem prolis, prae oculis habeatur can. 1051.

Quod si partes actu in concubinato vivant, provideatur opportunis modis ut scandalum, si adsit, removeatur, et pars catholica ad gratiam Dei recipiendam rite disponatur.

In reliquis, quod refertur ad publicationes, interrogationes de consensu, et sacros ritus, sive agatur de impedimento mixtae religionis sive disparitatis cultus, servantur praescripta Cod. I. C. can. 1026, 1102, 1109; et hujusmodi nuptiis celebratis, sive in proprio, sive in alieno territorio, Ordinarius invigilet, ut conjuges promissiones factas fideliter impleant.

5:—Sanadi in radice matrimonia attentata coram officiali civile vel ministro acatholico a suis subditis etiam extra territorium, aut non subditis intra limites proprii territorii, cum impedimento mixtae religionis, aut disparitatis cultus, dummodo consensus in utroque conjugue perseveret, isque legitime renovari non possit, sive quia pars acatholica de invaliditate matrimonii moneri nequeat sine periculo gravis damni aut incommodi a catholico conjugue subeundi; sive quia pars acatholica ad renovandum coram Ecclesia matrimoniale consensum, aut ad cautiones praestandas, ad praescriptum Cod. I. C. can. 1061, §2, ullo modo induci nequeat; dummodo aliud non obstat canonicum impedimentum dirimens, super quo Ipse dispensandi aut sanandi facultate non polleat.

Ipse Ordinarius serio moneat partem catholicam de gravissimo patrato scelere, salutare ei poenitentias imponat, et si casus ferat, eam ab excommunicatione absolvat juxta Cod. I. C. can. 2319, §1, n. 1, simulque declaret ob sanationis gra-

tiam a se acceptam, matrimonium effectum esse validum, legitimum et indissolubile jure divino et prolem forte susceptam vel suscipiendam legitimam esse; eique insuper gravibus verbis in mentem revocet obligationem, qua semper tenetur, pro viribus tutandi baptismum et educationem universae prolis utriusque sexus, tam forte natae quam forsitan nasciturae, in catholicae religionis sanctitate, et prudenter curandi conversionem conjugis ad fidem catholicam.

Cum autem de matrimonii validitate et prolis legitimatione in foro externo constare debeat, Ordinarius mandet ut singulis vicibus documentum sanationis cum attestazione peractae executionis diligenter custodiatur in Curia locali, necnon curet, nisi pro sua prudentia aliter indicaverit, ut in libro baptizatorum paroeciae, ubi pars catholica baptismum recepit, transcribatur notitia sanationis matrimonii, de quo actum est, cum adnotatione diei et anni.

ADNOTANDA:—1—In singulis autem praefatis sive dispensationibus sive sanationibus concedendis, Ordinarius expressam faciat mentionem Apostolicae delegations (Cod. I. C. can. 1057); et quod attinet ad facultatem sanandi in radice, mens est S. Congregationis S. Officii ut Ordinarius nonnisi parochos, singulis vicibus, subdelegare possit.

2:—Idem Ordinarius in fine cujuslibet anni referat ad S. Congregationem S. Officii, per tramitem S. Congregationis Consistorialis, de numero et specie dispensationum quae vigore praesentis indulti Ipse fuerit elargitus.

EX. S. CONGREGATIONE DE DISCIPLINA SACRAMENTORUM.

1:—Dispensandi justa et rationabili causa super matrimonialibus impedimentis minoris gradus quae in Can. 1042 recensentur, nec non super impedimentibus de quibus in can. 1058 ad effectum tantum matrimonium contrahendi.

2:—Dispensandi ex gravi urgentique causa quoties periculum sit in mora et matrimonium nequeat differri usque dum dispensatio a Santa Sede obtinetur super impedimentis majoris gradus infra recensitis:

(a) consanguinitatis in secundo aut in tertio cum primo mixtis, dummodo nullum exinde scandalum aut admiratio exoriatur;

(b) consanguinitatis in secundo lineae collateralis gradu;

(c) affinitatis in primo lineae collateralis gradu aequali vel mixto cum secundo;

(d) publicae honestatis in primo gradu, dummodo nullum subsit dubium quod conjux esse possit proles ab altero contrahentium genita.

3:—Dispensandi tempore et in actu Sacrae Pastoralis Visitationis aut Sacrarum Missionum, et non ultra, super omnibus matrimonialibus impedimentis supra memoratis cum iis qui in concubinato vivere reperiuntur.

4:—Sanandi in radice matrimonia nulliter contracta ob aliquod ex impedimentis minoris gradus si magnum adsit incommodum requirendi a parte ignara impedimenti renovationem consensus, dummodo tamen prior consensus preserveret et absit periculum divortii; monita tamen parte conscia impedimenti de effectu de hujus sanationis et debita facta adnotatione in libro matrimoniorum.

ADNOTANDA:—1:—Ordinarius recensitis facultatibus, sive per se sive per alias idoneas ecclesiasticas personas ad hoc specialiter deputandas, uti poterit in matrimoniis contrahendis et nulliter contractis cum suis subditis ubique commorantibus et aliis omnibus in proprio territorio actu degentibus, facta in unoquoque casu expressa mentione hujus Apostolicae delegationis ad normam canonis 1057.

2:—In usu earundem facultatum prae oculis habeantur quae in Cann. a 1048 ad 1054 statuta reperiuntur.

3:—Ordinarius in fine cujuslibet anni, referat ad Sacram Congregationem Sacramentorum, per tramitem S. Congregationis Consistorialis, de numero et specie dispensationum quas vigore praesentis indulti Ipse fuerit elargitus.

EX. S. POENITENTIARIA:

VIII:—Dispensandi ad petendum debitum conjugale cum transgressore voti castitatis perfectae et perpetuae, privatim post completum xviii aetatis annum emissi, qui matrimonium cum dicto voto contraxerit, hujusmodi poenitentem monendo, ipsum ad idem votum servandum teneri tam extra licitum matrimonii usum quam si conjugii supervixerit.

VIII:—Dispensandi super occulto criminis impedimento, dummodo sit absque ulla machinatione, et agatur de matrimonio jam contracto; monitis putatis conjugibus de necessaria consensus secreta renovatione, ac injuncta gravi et diuturna poenitentia salutari.

Item dispensandi super eodem occulto impedimento, dummodo pariter sit absque ulla machinatione, etiam in matrimoniis contrahendis; injuncta gravi et diuturna poenitentia salutari.

ADNOTANDUM:—Ordinarius recensitis facultatibus, tum absolventi a censuris, tum dispensandi, pro foro conscientiae, etiam extra sacramentalem confessionem et etiam extra dioecesim, quatenus vel ipse vel subditus vel uterque extra dioecesim fuerint, pro grege sibi commisso, ex speciali Sedis Apostolicae auctoritate delegata, uti valebit; easque intra fines dioecesis tantum Canonico Poenitentiario necnon Vicariis Foranis, pro foro pariter conscientiae et in actu sacramentali confessionis dumtaxat, etiam habitualiter, si ipsi placuerit, aliis vero confessariis cum ad ipsum Ordinarium in casibus particularibus poenitentium recursum habuerint, pro exposito casu impertiri poterit, nisi ob peculiares causas aliquibus confessariis specialiter subdelegandis, per tempus arbitrio suo statuendum, illas communicare indicabit.

NORMAE DE TAXIS.

2:—Pariter nulla exigatur taxa pro facultatibus S. Poenitentiarum, quae omnino gratis sunt concedendae.

3:—Quod spectat ad dispensationes et sanationes matrimoniales concedendas—ex facultatibus sive S. C. S. Officii sive S. C. de Disciplina Sacramentorum,—curet Ordinarius, ut nupturientes. qui pares solvendo inveniantur, aequam et congruam oblationem, juxta praxim apud Curias legitime inolitam, persolvant.

6:—Pro casum tamen diversitate, hujusmodi taxae moderandae aut dispensandae sunt, ob paupertatem oratorum, aliasve justas causas, pro prudenti judicio ac conscientia Ordinarii.

7:—Summa omnium taxarum et oblationum quas Ordinarius reapse exegerit, in fine cujuslibet anni ad S. Sedem, per tramitem S. Congregationis Consistorialis, transmittatur, distincte adnotando partes quae spectant ad singulas SS. Congregationes.

8:—Ipse Ordinarius pro quolibet indulto, etiam matrimoniali ad sensum can. 1056, taxam libellarum quinque adjicere poterit sibi que retinere in sui vel dioecesis necessitatibus erogandam; salvo praescripto No. 6.

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